TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 389.

DIETRICH LOEWE ET AL.

vs.

MARTIN LAWLOR ET AL.

ON A CERTIFICATE FROM AND WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

CERTIFICATE FILED JULY 11, 1907.
CERTIORARI AND RETURN FILED OCTOBER 21, 1907.

(20,792.)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 15, 1907.

United States Circuit Court of Appeals for the Second Circuit.

D. E. LOEWE and MARTIN FUCHS, Plaintiffs in Error (Plaintiffs Below),
vs.
MARTIN LAWLOR ET AL., Defendants in Error (Defendants Below).

Transcript of Record.

Error to the Circuit Court of the United States for the District of Connecticut.

Printed under the Direction of the Clerk.

[Stamped:] United States Circuit Court of Appeals, Second Circuit. Filed Jan. 25, 1907. William Parkin, Clerk.

Writ of Error.

The United States Circuit Court of Appeals for the Second Circuit.

THE UNITED STATES OF AMERICA, *Second Judicial Circuit, ss:*

The President of the United States of America to the Judges of the Circuit Court of the United States for the District of Connecticut, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said Circuit Court before you, between Dietrich E. Doewe and Martin Fuchs, both of the Town of Danbury, Connecticut, plaintiffs, and Martin Lawlor, John Cords, George W. Morehouse, George H. Gilbert, William P. Bailey, Howard S. Gilbert, Charles Green, Charles Lathrop and John McDole, all of the Town of Bethel, Connecticut; Charles J. Barrett, Martin Gorman, Peter Gallagher, Daniel P. Kelley, Simon Blake, Hugh C. Shalvoy, Michael C. Griffin, Patrick Connolly, Albert Hoyt and John Morris, all of the Town of Danbury, Connecticut; Robert Pearson, John E. Paul, Charles Flynn, John W. Sculley, Stephen Carlin, Charles Moore, James Whitney, William A. Brennan and Homer Rockwell, all of the Town of Norwalk, Connecticut; Frederick Taylor, Owen Reiley, Charles Smith, Edward Cunningham, George A. Davis, George Gerrish, Peter Ward, Fanton W. Beers, Albert Berg, Addison Hathaway, John McNamara, John Redway, Ernest Talmadge, W. J. Weisheit, Daniel Riordan, John E. Rooney, Thomas Saunders, Max Singerwode, John Spendlove, Peter F. Kearney, Patrick Keating, James Kinnane, Thomas Layhe, S. Wallace Osborn, all of the Town of Norwalk, Connecticut; Barney Murphy, Owen Murray, John Halpin, John Kane, Edward Manion, Edward Culhane, Edward Johnson, Patrick Troy, Patrick Wixted, Henry Gilbert, Starr Bassett, William Ohler, Wil-

liam Ochs, Myron Trowbridge, Frederick Benedict, Orrin Smith, Charles Frost, Ruben Johnson, Virgil Dibble, Charles Bailey, William Stone, E. Romaine Barnum, Byron Morgan, Joseph Burr, Levi Short, Henry C. Judd, T. Archibald Evans, all of the Town of Bethel, Connecticut; Theophilus Abieniste, Andrew Aitkin, Nicholas W. Allen, Thomas H. Allen, Daniel H. Barnes, Nicholas W. Barzin, Jerome W. Bates, Charles Beckett, John Beckett, Jr., Clemens Beschele, Frederick S. Blackburn, John Blake, Herman H. Bohmann, Nelson H. Booth, James N. Boughey, Thomas Boyd, John Bradshaw, Peter J. Brennan, Alphonse Bresson, Theodore Bright, Orrin L. Bronson, Byron S. Brooks, Thomas D. Brooks, Andrew G. Brown, William F. Burns, Chauncey H. Butler, Stephen F. Butler, William H. Butler, John Byrone, James P. Callahan, John J. Callahan, Achille Canale, Thomas J. Gassidy, William Clancy, Elmer R. Clark, John H. Collins, Lewy W. Comes, Michael W. Corbett, James D. Costello, John H. Craft, Byron W. Crane, James Crotty, John Crotty, Michael Crowe, Patrick Culligan, Peter T. Currie, William Deakin, George F. Denton, George Dickens, James Dillon, Thomas J. Durkin, James Durnin, William S. Dutcher, John Dyer, John Ellegett, Patrick Ellegett, Patrick Elliott, John G. Ely, Carl Erdman, Timothy H. Farrell, Patrick J. Feeley, Patrick Fennell, Patrick J. Fisher, Patrick Fitzgerald, Patrick Flannagan, Emil Floyske, Thomas Foley, Christian Garni, William E. Geartner, John Gilbride, Patrick Gildea, George J. Goebel, Wright Hampson, David J. Hardy, Alexander Harkness, John Harkness, Patrick
Hart, John Hassett, Stephen Havran, Michael Hennessy,
3 George M. Herrick, Ernest H. Heuser, Charles A. Hodge,
Adolph Holdeichel, Nathan C. Hoy, William Humphries, Patrick F. Hunt, Charles W. Hurd, Michael Hurd, Patrick E. Jeffrey, Daniel Kearns, Martin Keating, Thomas Keenan, Michael F. Kenney, John Keough, Charles J. King, Frank Kornhass, Frank E. Krebs, Martin Lauf, John M. Lawler, Edward D. Lees, Thomas Leonard, William E. Luke, Michael F. Lynch, George F. Marshall, Jeremiah McCarthy, Patrick J. McCarthy, Patrick T. McCarthy, Martin McCue, Thomas E. McGauley, Martin McGettrick, James F. McGlone, John McGlone, Peter McGlone, Patrick McGrath, Charles F. McHan, Thomas McHugh, Daniel McInerey, Frank Meath, Henry Messer, Henry C. Michael, George J. Miller, John Miller, Jr., Patrick Moffitt, Gustave Mougin, Eugene L. Mulkin, Daniel Murphy, Timothy Murray, John B. Nowlan, William V. Nowlan, George T. Oakley, John O'Boy, Peter O'Boy, Louis E. Orton, Daniel J. Osborne, Alvah S. Pearce, George H. Phillips, Peter Picken, Arthur L. Pickett, John Pribula, Jacob Prinz, Christian Rheinhold, Frank Rhode, John Rooney, Frank E. Seaman, Louis Schak, Charles Shaffer, Frederick L. Stahl, Nicholas Streibig, George Stuckey, Stephen Stuckey, Michael E. Sullivan, Mark Sullivan, William S. Sullivan, Joseph Tosi, Thomas E. Waters, Frank K. Wildman, Samuel S. Wilson, Michael Connors, John J. Culhane and John Leonard, all of the Town of Danbury, Connecticut, defendants, a manifest error hath happened to the great prejudice and damage of the plaintiffs,

ch E. Loewe and Martin Fuchs, as is said and appears by the
on herein;
being willing that error, if any hath been, should be duly
cted and full and speedy justice done to the parties aforesaid
is behalf, command you, if judgment be therein given, that
under your seal, distinctly and openly, you send the record and
edings aforesaid, with all things concerning the same, to the
United States Circuit Court of Appeals for the Second Cir-
cuit, together with this writ, so that you have the same at the
City of New York, in the State of New York, in said Cir-
on the 28th day of January, 1907, next, in the said Circuit
of Appeals, to be then and there held, that the record and
edings aforesaid being inspected, the said Circuit Court of Ap-
may cause further to be done therein to correct that error,
of right and according to the laws and customs of the United
s, should be done.
itness the Honorable Melville W. Fuller, Chief Justice of the
ed States, this 31st day of December, A. D. 1906, and 131st of
ndependence of the United States of America.
lowed by

JAMES P. PLATT,
U. S. Judge.

test:

R. F. CARROLL,
Deputy Clerk of the Circuit Court of the
United States for the District of Connecticut.

RICT OF CONNECTICUT, *County of Hartford, ss:*

HARTFORD, *January* 9, 1907.

hen and there I made service of this writ by delivering to and
ng in the hands of E. E. Marion, Clerk of the United States
uit Court for the District of Connecticut a true and attested copy
of.
test:

EDSON L. BISHOP,
U. S. Marshal,
By F. BRAINARD SMITH,
Deputy U. S. Marshal.

Fees.

travel	.06
rvice	2.
	$2.06

5 Circuit Court of the United States, District of Connecticut.

No. 538. At Law.

D. E. LOEWE and MARTIN FUCHS, Plaintiffs,
vs.
MARTIN LAWLOR ET AL., Defendants.

Complaint and Demurrer.

UNITED STATES OF AMERICA, *District of Connecticut:*

[SEAL.] The President of the United States of America to the Marshal of the District of Connecticut, Greeting:

You are hereby commanded to attach to the value of two hundred and fifty thousand ($250,000) dollars, the goods or estate of Martin Lawlor, John Cords, George W. Morehouse, George H. Gilbert, William P. Bailey, Howard S. Gilbert, Charles Green, Charles Lathrop, and John McDowell, all of said town of Bethel; Charles J. Barrett, Martin Gorman, Peter Gallagher, Daniel P. Kelley, Simon Blake, Hugh C. Shalvoy, Michael C. Griffin, Patrick Connolly, Albert Hoyt and John Morris, all of said Danbury; Robert Pearson, John E. Paul, Charles Flynn, John W. Sculley, Stephen Carlin, Charles Moore, James Whitney, William A. Brennan and Homer Rockwell, all of said town of Norwalk; Frederick Taylor, Owen Reiley, Charles Smith, Edward Cunningham, George
6 A. Davis, George Gerrish, Peter Ward, Fanton W. Beers, Albert Berg, Addison Hathaway, John McNamara, John Redway, Ernest Talmadge, W. J. Weisheit, Daniel Riordan, John E. Rooney, Thomas Saunders, Max Singerwode, John Spendlove, Peter F. Kearney, Patrick Keating, James Kinnane, Thomas Layhe, S. Wallace Osborn, all of said town of Norwalk, Connecticut; Barney Murphy, Owen Murry, John Halpin, John Kane, Edward Manion, Edward Culhane, Edward Johnson, Patrick Troy, Patrick Wixted, Henry Gilbert, Starr Bassett, William Ohler, William Ochs, Myron Trowbridge, Frederick Benedict, Orrin Smith, Charles Frost, Reuben Johnson, Virgil Dibble, Charles Bailey, William Stone, E. Romaine Barnum, Byron Morgan, Joseph Burr, Levi Short, Henry C. Judd, T. Archibald Evans, all of said town of Bethel; Theophilus Abieniste, Andrew Aitkin, Nicholas W. Allen, Thomas H. Allen, Daniel H. Barnes, Nicholas W. Barzin, Jerome W. Bates, Charles Beckett, John Beckett, Jr., Clemens Beschele, Frederick S. Blackburn, John Blake, Herman H. Bohman, Nelson H. Booth, James N. Boughey, Thomas Boyd, John Bradshaw, Peter J. Brennan, Alphonse Bresson, Theodore Bright, Orrin L. Bronson, Byron S. Brooks, Thomas D. Brooks, Andrew G. Brown, William F. Burns, Chauncey H. Butler, Stephen F. Butler, William H. Butler, John Byrone, James P. Callahan, John J. Callahan, Achille Canale, Thomas J. Cassidy, William Clancy, Elmer R. Clark, John H.

Collins, Lewy W. Comes, Michael W. Corbett, James D. Costello, John H. Craft, Byron W. Crane, James Crotty, John Crotty, Michael Crowe, Patrick Culligan, Peter T. Currie, William Deakin, George F. Denton, George Dickens, James Dillon, Thomas J. Durkin, James Durnin, William S. Dutcher, John Dyer, John Ellegett, Patrick Ellegett, Patrick Elliott, John G. Ely, Carl Erdman, Timothy H. Farrell, Patrick J. Feeley, Patrick Fennell, Patrick J.
7 Fisher, Patrick Fitzgerald, Patrick Flannagan, Emil Floyske, Thomas Foley, Christian Garni, William E. Geartner, John Gilbride, Patrick Gildea, George J. Goebel, Wright Hampson, David J. Hardy, Alexander Harkness, John Harkness, Patrick Hart, John Hassett, Stephen Havran, Michael Hennessy, George M. Herrick, Ernest H. Heuser, Charles A. Hodge, Adolph Holdeichel, Nathan O. Hoy, William Humphries, Patrick F. Hunt, Charles W. Hurd, Michael Hurd, Patrick E. Jeffrey, David Kearns, Martin Keating, Thomas Keenan, Michael F. Kenney, John Keough, Charles J. King, Frank Kornhass, Frank E. Krebs, Martin Lauf, John M. Lawler, Edward D. Lees, Thomas Leonard, William E. Luke, Michael F. Lynch, George F. Marshall, Jeremiah McCarthy, Patrick J. McCarthy, Patrick T. McCarthy, Martin McCue, Thomas E. McGauley, Martin McGettrick, James F. McGlone, John McGlone, Peter McGlone, Patrick McGrath, Charles F. McHan, Thomas McHugh, Daniel McInerey, Frank Meath, Henry Messer, Henry C. Michael, George J. Miller, John Miller, Jr., Patrick Moffit, Gustave Mougin, Eugene L. Mulkin, Daniel Murphy, Timothy Murray, John B. Nowlan, William V. Nowlan, George T. Oakley, John O'Boy, Peter O'Boy, Louis E. Orton, Daniel J. Osborn, Alvah S. Pearce, George H. Phillips, Peter Picken, Arthur I. Pickett, John Pribula, Jacob Prinz, Christian Rheinhold, Frank Rhode, John Rooney, Frank E. Seaman, Louis Shack, Charles Shaffer, Frederick Stahl, Nicholas Streibig, George Stuckey, Stephen Stuckey, Michael E. Sullivan, Mark Sullivan, William S. Sullivan, Joseph Tosi, Thomas E. Waters, Frank K. Wildman, Samuel S. Wilson, Michael Connors, John J. Culhane, John Leonard, all of said town of Danbury; and them summon to appear before before the Circuit Court of the United States for the District of Connecticut, to be held at Hartford, in said District, on the second Tuesday of October, 1903, then and there to answer unto Dietrich E. Loewe and Martin Fuch, both residents of said town of Danbury,
8 in the State and District of Connecticut, in a civil action wherein the plaintiffs complain and say:

1. The defendants are all residents of the District of Connecticut.

2. The plaintiffs, who reside in Danbury, in the State and District of Connecticut, are copartners, located and doing business as manufacturers and sellers of hats at said Danbury, under the firm name of D. E. Loewe & Co.

3. At said Danbury, the plaintiffs have a factory for the making of hats, for sale by them in the various States of the Union, and have for many years employed, at said factory, a large number of

men in the manufacture and sale of said hats, and have invested in that branch of their business a large amount of capital, and in their business of selling the product of their factory and filling orders for said hats, have built up and established a large interstate trade, employing more than two hundred and thirty (230) persons in making and annually selling hats of a value exceeding four hundred thousand ($400,000) dollars.

4. The plaintiffs deeming it their right to manage and conduct their business without interference from individuals or associations not connected therewith, have for many years maintained the policy of refusing to suffer or permit any person or organization to direct or control their said business, and in consequence of said policy, have conducted their said business upon the broad and patriotic principle of not discriminating against any person seeking employment because of his being or not being connected with any labor or other organization, and have refused to enter into agreement with any person or organization whereby the rights and privileges, either of themselves or any employee, would be jeopardized, surrendered to or controlled by said person or organization, and have believed said policy, which was and is well known to the defendants, to be absolutely necessary to the successful conduct of their said business and the welfare of their employees.

5. The plaintiffs, for many years, have been and now are engaged in trade and commerce among the several States of the Union, in selling and shipping almost the whole of the product of their said factory by common carriers, from said Danbury to wholesale dealers residing and doing business in each of the States of Maine, Massachusetts, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Virginia, Ohio, Illinois, Michigan, Wisconsin, Missouri, Nebraska, Arkansas, California and other States, to the amount of many hundreds of thousands of dollars, and in sending agents with samples from said Danbury into and through each of said States to visit said wholesale dealers at their places of business in said several States, and solicit and procure from them orders for said hats, to be filled by hats to be shipped from their said factory at said Danbury, by common carriers to said wholesale dealers, to be by them paid for after the delivery thereof at their several places of business.

6. On July 25, 1902, the amount of capital invested by the plaintiffs in said business of making and selling hats, approximated one hundred and thirty thousand dollars, and the value of the hats annually sold and shipped by them in previous years, to said dealers in States other than Connecticut, exceeded four hundred thousand dollars, while the value of hats sold by them in the State of Connecticut did not exceed ten thousand dollars.

7. On July 25, 1902, the plaintiffs had made preparations to do a large and profitable business with said wholesale dealers in other States, and the condition of their business was such as to warrant the full belief that the ensuing year would be the most successful in their experience. Their factory was then running to its full capacity in filling a large number of orders from such wholesale dealers in other States. They were then employing

ut one hundred and sixty men in the making and finishing de-
tments, a large number in the trimming and other departments,
se work was dependent upon the previous work of the makers
l finishers, and they then had about one hundred and fifty dozens
hats in process of manufacture, and in such condition as to be
ishable and ruined if work was stopped upon them.

. The plaintiffs then were and now are almost wholly dependent
n the sale and shipments of hats as aforesaid, to said dealers in
tes other than Connecticut, to keep their said factory running and
dispose of its product and their capital in said business profitably
ployed, and the restraint, curtailment and destruction of their
l trade and commerce with their said customers in said States
er than Connecticut, by the combination, conspiracy and acts of
defendants, as hereinafter set forth, have been and now are of
ious damage to the property and business of the plaintiffs, as here-
fter set forth.

. The individual defendants, named in this writ, are all members
a combination or association of persons, styling themselves The
ited Hatters of North America, and said combination includes
re than nine thousand persons, residing in the several States of
ssachusetts, Connecticut, New York, New Jersey, Pennsylvania,
liana, Illinois, Missouri, California, and in the Province of On-
io in the Dominion of Canada. Said combination is sub-divided
o twenty sub-combinations, each of which is by themselves styled
ocal Union of The United Hatters of North America. Six of said
-combinations are in the State of Connecticut, and known as local
Unions, 1 and 2, 10 and 11, and 15 and 16 of The United
Hatters of North America, and have an aggregate member-
ship of more than three thousand persons residing in the
te of Connecticut.

10. Said combination of persons collectively known as The United
tters of North America, owns, controls, edits, publishes, and issues
paper styled *The Journal of The United Hatters of North America*,
which are published reports of many of the acts of its agents,
reinafter mentioned, which circulates widely among its members
d the public, and which affords a ready, convenient, powerful and
ective vehicle for the dissemination of information to its members
d the public as to boycotts declared and pushed by them, and of
acts and measures of its members and agents for carrying such
ycotts into effect, and was so used by them in connection with the
s of the defendants hereinafter set forth.

11. Said combination owns and absolutely controls the use of a
tain label or distinguishing mark, which it styles the Union Label
the United Hatters of North America, which mark, when so used
them, affords to them a ready, convenient, and effective instru-
nt and means of boycotting the hats of any manufacturer against
om they may desire to use it for that purpose.

12. The defendants in this suit are also all members of a combina-
n or association of persons calling themselves and known as The
nerican Federation of Labor, which includes more than a million
d four hundred thousand members residing in the several States

and Territories of the Union, and in the Dominion of Canada, and in all the places in the several States, where the wholesale dealers in hats, hereinbefore mentioned, and their customers, reside and do business. Said combination is subdivided into subordinate groups, or combinations, comprising one hundred and ten national and international unions or combinations, of which the said combination of persons styling themselves The United Hatters of North
12 America is one, composed of twelve thousand local unions, twenty-eight State federations or combinations, more than five hundred central labor unions or combinations, and more than two thousand local unions or combinations, which are not included in the above mentioned national and international combinations.

13. Said combination of persons collectively known as The American Federation of Labor owns, controls, edits, publishes, and issues a paper or magazine called the *American Federationist*, which it declares to be its official organ and mouthpiece, which has a very wide circulation among its members and others, and which affords a ready, convenient, powerful and effective vehicle and instrument for the dissemination of information, as to persons, their products and manufactures, boycotted or to be boycotted, by its members, and as to measures adopted and statements to be published, detrimental to such persons and to the sale of their manufactures and for boycotting such persons, their manufactures, and said paper has been and now is constantly used, printed and distributed for said purposes among its members and the public and was so used by the defendants and their confederates in boycotting the product of the firm of F. Berg & Co., of Orange, New Jersey, and H. H. Roelofs & Co., of Philadelphia, Pa., hat manufacturers, to their very great injury and until the said firms successively yielded to their demands in pursuance of the general scheme of the defendant hereinafter set forth.

14. The persons united in said combination, known as The American Federation of Labor, including the persons in said sub-combination known as The United Hatters of North America, constantly employ more than one thousand agents in the States and Territories of the United States, to push, enforce and carry into effect all
13 boycotts declared by the said members, including those in aid of the combined scheme, purpose and effort hereinafter stated, to force all the manufacturers of fur hats in the United States, including the plaintiffs, to unionize their factories by restraining and destroying their interstate trade and commerce, as hereinafter stated, all of which said agents act under the immediate supervision and personal direction of one Samuel Gompers, who is chief agent of the said combination of persons for said purpose, and of each of the said sub-combinations, and the said agents make monthly reports of their doings in pushing and enforcing and causing to be pushed and enforced said boycotts, and publish the same monthly in said paper known as the *American Federationist*, of which he is the editor, appointed by the said members, which said paper in connection with said statement or summary, is declared to be the authorized and official mouthpiece of each of said sub-combinations, including the said United Hatters of North America. Said statement is declared

by the defendants to be a faithful record of the doings of said agents, and each of said statements, made during the period covered by the acts of the defendants against the plaintiffs herein stated, contains the announcement to the members of said combination and the public, that all boycotts declared by them are being by them and their agents pushed, enforced and observed.

15. Said combination of persons collectively known as The American Federation of Labor, of which the defendants are members, was by the defendants and their other members formed for the purpose among others, of facilitating the declaration and successful maintenance of boycotts, by and for said combination of persons known as The United Hatters of North America, acting through the said Federation of Labor and its other component parts or mem-
14 bers, and it and its component parts have frequently declared boycotts, at the request of the defendants, against the business and product of various hat manufacturers, and have vigorously prosecuted the same by and through the powerful machinery at their command as aforesaid, in carrying out their general scheme herein stated, to the great damage and loss of business of said manufacturers, and particularly during the years of 1901 and 1902, they declared, prosecuted and waged, at the request of the defendants and their agents, a boycott against the hats made by and the business of H. H. Roelofs & Co., of Philadelphia, Pa., until, by causing them great damage and loss of business, they coerced them into yielding to the demand of the defendants and their agents, by the said factory of said Roelofs & Co. be unionized, as termed by the defendants, and into agreeing to employ, and employing exclusively, members of their said combination in the making and finishing departments of said factory, and in large measure surrendering to the defendants and their agents the control of said factory and business, all of which was well known to the plaintiffs, their customers, wholesale dealers and the public, and was, by the defendants and their agents widely proclaimed through all their agencies above mentioned, in connection with their acts against the plaintiffs, as hereinafter set forth, for the purpose of intimidating and coercing said wholesale dealers and their customers from buying the hats of the plaintiffs, by creating in their minds the fear that the defendants would invoke and put into operation against them, all said powerful means, measures and machinery, if they should handle the hats of the plaintiffs.

16. The defendants, together with the other persons united with them in said combination, known as The United Hatters of North America, have been for many years, and now are, engaged in a combined scheme and effort to force all manufacturers of fur hats
15 in the United States, including the plaintiffs, against their will and their previous policy of carrying on their business, to organize their workmen in the departments of making and finishing, in each of their factories, into an organization, to be part and parcel of the said combination known as The United Hatters of North America, or as the defendants and their confederates term it, to unionize their shops, with the intent thereby to control the employment of labor in and the operation of said factories, and to subject

the same to the direction and control of persons, other than the owners of the same, in a manner extremely onerous and distasteful to such owners, and to carry out such scheme, effort and purpose, by restraining and destroying the interstate trade and commerce of such manufacturers, by means of intimidation of and threats made to such manufacturers and their customers in the several States, of boycotting them, their product and their customers, using therefor all the powerful means at their command as aforesaid, until such time as from the damage and loss of business resulting therefrom, the said manufacturers should yield to the said demand to unionize their factories.

17. The defendants and other members of said United Hatters of North America, acting with them and in pursuance of said general combined scheme and purpose, and in carrying the same into effect against said manufacturers, including the plaintiffs, and by use of the means above stated, and the fear thereof, have within a very few years, forced the following named manufacturers of hats in the United States to yield to their demands, and unionize their factories, viz.:

Austin, Drew & Co., Orange; A. C. Adams, Phila.; J. B. Allen, San Francisco; M. Budish, Newark; Bornheim & Strause, Phila.; M. Bonbau, Newark; F. Berg & Co., Orange; Louis Boselli,
16 Paterson; Burgess & Co., Newark; Boutelier & Carr, Newark; Brennan, Carr & Co., Orange; Burgesser & Co., Newark; Crimond Bros., Newark; Fred. S. Crane, Newark; Cohen & Greene, Newark; F. Cummings, Son & Co., Orange; Connett & Co., Newark; E. V. Connett & Co., Orange; Charles W. Dempster & Co., Chicago; B. Daly Hat Manufacturing Co., Newark; Fishman & Co., Newark; R. & L. Feldstein, New York; F. Fouratt, Millburn; Joseph Fisch, Newark; Joseph A. Heath, Hoboken; I. C. Hedden, Newark; Hackettstown Hat Works, Hackettstown; Johnson & Hannoch, Newark; F. Kridel, Newark; J. M. Klappolz, Newark; J. H. Long, Newark; G. F. Lewis, Jersey City; Morris Mandel, Newark; Miller, Newark; Samuel Munheim Co., Brooklyn; E. A. Mallory & Sons, Danbury; Edward Murphy, Brooklyn; Monarch Hat Co., Newark; Nichols & Co., Newark; Napier & Mitchell, Bellville; Price & Voght, Phila.; Pfeiffer & Co., Newark; H. D. Parmlee & Co., Newark; Penfield & Griffin Co., Bridgeport; Pacific Coast Hat Works, San Francisco; Joseph A. Parker, Boston; Priluker, Newark; Pioneer Hat Works, Wabash; Arthur Roelofs & Co., Phila.; Redwing Hat Manufacturing Co., Redwing; C. B. Rutan & Co., West Orange; Frank Schoble & Co., Phila.; Stegman & Co., Newark; The Sigler Hat Co., Phila.; F. Smith & Son, Orange; Thomas Smith, Newark; Stewart & Smyth, Newark; Albert Sitz & Son, Newark; Shaw, Kerr & Co., Orange; Smith & Co., Newark; Silberstein & Flexner, Newark; Trimble Cless Hat Co., Orange; Uniglicht & Co., Newark, O.; Willegerod, Newark; E. R. Wessels, Jersey City; Westchester Hat Co., Yonkers; Wosnitzer & Co., Newark; Leigh Whittaker, South Norwalk; George B. Wells, Phila.; M. Yudisky, Newark; and until there remained, according to the statements of the defendants, only twelve hat factories in the United States which have not submitted to their said demands, and

the defendants in pursuing their warfare against the plain-
17 tiffs, as hereinafter set forth, and in connection with their said acts against them, have made public announcement of that fact and of the firm so coerced by them, in order thereby to increase the effectiveness of their acts in intimidating said wholesale dealers and their customers in States other than Connecticut, from buying hats from the plaintiffs, as hereinafter set forth.

18. To carry out said scheme and purpose, the defendants have appointed and employed and do steadily employ, certain special agents to act in their behalf, with full and express authority from them and the other members of said combination, and under explicit instructions from them, to use every means in their power, to compel all such manufacturers of hats to so unionize their factories, and each and all of the defendants in this suit did the several acts hereinafter stated, either by themselves or their agents, by them thereto fully authorized.

19. On or about March 1, 1901, in pursuance of said general scheme and purpose, the defendants and the other members of said combination, The United Hatters of North America, through their agents, the said John A. Moffitt, Martin Lawlor, John Phillips, James P. Maher and Charles J. Barrett, who acted for themselves and the other defendants, demanded of the plaintiffs that they should unionize their said factory, in the making and finishing departments, and also thereby acquire the right to use and use, the said Union label, subject to the right of the defendants to recall the same at pleasure, in all hats made by them, and then notified the plaintiffs that if they failed to yield to said demand, the defendants and all the other members of the said combination known as The United Hatters of North America, would resort to their said usual and well known methods to compel them so to do. After several conferences,
18 and in April, 1901, the plaintiffs replied to the said demand of the defendants as follows:

"Firmly believing that we are acting for the best interests of our firm, for the best interests of those whom we employ, and for the best interests of Danbury, by operating an independent or open factory, we hereby notify you that we decline to have our shop unionized, and if attacked, shall use all lawful means to protect our business interests."

The plaintiffs were then employing many union and non union men, and their said factory was running smoothly and satisfactory both to the plaintiffs and their employees. The defendants, their confederates and agents, deferred the execution of their said threat against the plaintiffs until the conclusion of their attack made in pursuance of the same general scheme and purpose against H. H. Roelofs & Co., which resulted in the surrender of Roelofs & Co., on July 15, 1902, except that the defendants, their confederates and agents, in November, 1901, caused the said American Federation of Labor to declare a boycott against any dealer or dealers who should handle the products of the plaintiffs.

20. On or about July 25, 1902, the defendants individually and collectively, and as members of said combinations and associations,

and with other persons whose names are unknown to the plaintiffs, associated with them, in pursuance of the general scheme and purpose aforesaid, to force all manufacturers of fur hats, and particularly the plaintiffs, to so unionize their factories, wantonly, wrongfully, maliciously, unlawfully and in violation of the provisions of the "Act of Congress, approved July 2, 1890," and entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies,"
19 and with intent to injure the property and business of the plaintiffs by means of acts done which are forbidden and declared to be unlawful, by said Act of Congress, entered into a combination and conspiracy to restrain the plaintiffs and their customers in States other than Connecticut, in carrying on said trade and commerce among the several States and to wholly prevent them from engaging in and carrying on said trade and commerce between them and to prevent the plaintiffs from selling their hats to wholesale dealers and purchasers in said States other than Connecticut, and to prevent said dealers and customers in said other States from buying the same, and to prevent the plaintiffs from obtaining orders for their hats from such customers, and filling the same, and shipping said hats to said customers in said States as aforesaid, and thereby injure the plaintiffs in their property and business and to render unsaleable the product and output of their said factory, so the subject of interstate commerce, in whosoever's hands the same might be or come, through said interstate trade and commerce, and to employ as means to carry out said combination and conspiracy and the purposes thereof, and accomplish the same, the following measures and acts, viz.:

To cause, by means of threats and coercion, and without warning or information to the plaintiffs, the concerted and simultaneous withdrawal of all the makers and finishers of hats then working for them, who were not members of their said combination, The United Hatters of North America, as well as those who were such members, and thereby cripple the operation of the plaintiff's factory, and prevent the plaintiffs from filling a large number of orders then on hand, from such wholesale dealers in States other than Connecticut, which they had engaged to fill and were then in the act of filling, as was well known to the defendants; in connection therewith to declare a boycott against all hats made for sale and sold and delivered, or to be so sold or delivered, by the plaintiffs to said wholesale
20 dealers in States other than Connecticut, and to actively boycott the same and the busines of those who should deal in them, and thereby prevent the sale of the same by those in whose hands they might be or come through said interstate trade in said several States; to procure and cause others of said combinations united with them in said American Federation of Labor, in like manner to declare a boycott against and to actively boycott the same and the business of such wholesale dealers as should buy or sell them, and of those who should purchase them from such wholesale dealers; to intimidate such wholesale dealers from purchasing or dealing in the hats of the plaintiffs by informing them that the American Federation of Labor had declared a boycott against the

product of the plaintiffs and against any dealer who should handle it, and that the same was to be actively pressed against them, and by distributing circulars containing notices that such dealers and their customers were to be boycotted; to theaten with a boycott those customers who should buy any goods whatever, even though union made, of such boycotted dealers, and at the same time to notify such wholesale dealers that they were at liberty to deal in the hats of any other non-union manufacturer of similar quality to those made by the plaintiffs, but must not deal in the hats made by the plaintiffs under threats of such boycotting; to falsely represent to said wholesale dealers and their customers, that the plaintiffs had discriminated against the union men in their employ, had thrown them out of employment because they refused to give up their union cards and teach boys, who were intended to take their places after seven months' instruction, and had driven their employees to extreme measures "by their persistent, unfair and un-American policy of antagonizing union labor, forcing wages to a starvation scale, and given boys and cheap, unskilled foreign labor preference over experienced and
21 capable union workmen," in order to intimidate said dealers from purchasing said hats by reason of the prejudice thereby created against the plaintiffs and the hats made by them, among those who might otherwise purchase them; to use the said union label of said The United Hatters of North America as an instrument to aid them in carrying out said conspiracy and combination against the plaintiffs' and their customers' interstate trade aforesaid, and in connection with the boycotting above mentioned, for the purpose of describing and identifying the hats of the plaintiffs, and singling them out to be so boycotted; to employ a large number of agents to visit said wholesale dealers and their customers, at their several places of business, and threaten them with loss of business if they should buy or handle the hats of the plaintiffs, and thereby prevent them from buying said hats, and in connection therewith to cause said dealers to be waited upon by committees representing large combinations of persons in their several localities to make similar threats to them; to use the daily press in the localities where such wholesale dealers reside, and do business, to announce and advertise the said boycotts against the hats of the plaintiffs and said wholesale dealers, and thereby make the same more effective and oppressive, and to use the columns of their said paper, the *Journal of the United Hatters of North America,* for that purpose, and to describe the acts of their said agents in prosecuting the same.

21. Afterwards, to wit, on July 25, 1902, and on divers days since hitherto, the defendants in pursuance of said combination and conspiracy, and to carry the same into effect, did cause the concerted and simultaneous withdrawal, by means of threats and coercion made by them, and without previous warning or information thereof to the plaintiffs, of all but ten of the non-union makers and finishers of hats then working for them, as well as all of their
22 union makers and finishers, leaving large numbers of hats in an unfinished and perishable condition, with intent to cripple and did thereby cripple the operation of the plaintiffs' fac-

tory until the latter part of October, 1902, and thereby prevented the plaintiffs from filling a large number of orders then on hand from such wholesale dealers in States other than Connecticut, which they had engaged to fill and were then in the act of filling, as well known to the defendants, and thereby caused the loss to the plaintiffs of many orders from said wholesale dealers in other States, and greatly hindered and delayed them in filling such orders, and falsely representing to said wholesale dealers, their customers, and the public generally in States other than Connecticut, that the plaintiffs had discriminated against the union men in their employ, and had discharged or thrown out of employment their union men in August, 1902; that they had driven their employees to extreme measures by their persistent, unfair and un-American policy of antagonizing union labor, forcing wages down to a starvation scale and giving boys and cheap, unskilled foreign labor preference over experienced and capable workmen; that skilled hatters had been discharged from said factory for no other cause than their devotion and adherence to the principles of organized labor in refusing to give up their union cards, and to teach the trade to boys who were intended to take the place of union workmen after seven months' instruction, and that unable to submit longer to a system of pretty tyrannies that might be tolerated in Siberia but could not be borne by independent Americans, the workmen in the factory inaugurated the strike to compel the firm to recognize their rights, in order to prejudice, and did thereby prejudice the public, against the plaintiffs and their product, and in order to intimidate, and did thereby intimidate said wholesale dealers and their customers, in
23 States other than Connecticut, from purchasing hats from the plaintiffs by reason of the fear of the prejudice created against said hats; and in connection therewith declared a boycott against all hats made for and so sold and delivered, and to be so sold and delivered to said wholesale dealers, in States other than Connecticut, and actively boycotted the same and the business of those who dealt in them in such other States, and thereby restrained and prevented the purchase of the same from the plaintiffs, and the sale of the same by those in whose hands they were, or might thereafter be, in the course of such interstate trade, and caused and *produced* others of said combinations united with them in the said American Federation of Labor to declare a boycott against the plaintiffs, their product and against the business of such wholesale dealers in States other than Connecticut, as should buy or sell them, and of those who should purchase from such wholesale dealers any goods whatever, and further intimidated said wholesale dealers from purchasing or dealing in the hats made by the plaintiffs, as aforesaid, by informing them that the American Federation of Labor had declared a boycott against the hats of the plaintiffs and against any dealer who should handle them, and that said boycott was to be actively pressed against them, and by sending agents and committees from various of said labor organizations, to threaten said wholesale dealers and their customers with a boycott from them if

they purchased or handled the goods of plaintiffs, and by distributing in San Francisco, California, and other places, circulars containing notices that such dealers, and their customers were to be boycotted, and threatened with a boycott, and did actively boycott the customers who did or should buy any goods whatever, even though union made, of such wholesale dealers so boycotted, and used the daily press to advertise and announce said boycott
24 and the measures taken in pursuance thereof by said labor organizations, particularly the *San Francisco Bulletin*, in its issues of July 2 and July 4, 1903, and a daily paper published in Richmond, Virginia, on December 10, 1902, and notified such wholesale dealers in States other than Connecticut, that they were at liberty to deal in the hats of any other non-union hat manufacturers of similar quality to those of the plaintiffs, but that they must not deal in the hats made by the plaintiffs, under threats of being boycotted for so doing, and used the said union label of the United Hatters of North America as an instrument to aid them in carrying out said combination and conspiracy against the plaintiffs' and their customers' interstate trade as aforesaid, and in connection with such boycotting by using the same and its absence from the hats of the plaintiffs, as an insignia or device to indicate to the purchaser that the hats of the plaintiffs were to be boycotted, and to point them out for that purpose, and employed a large number of agents to visit said wholesale dealers and their customers at their several places of business in each of said States, particularly in Philadelphia and other places in the State of Pennsylvania, in Baltimore in the State of Maryland, in Richmond and other places in the State of Virginia, and in San Francisco and other places in the State of California, to intimidate and threaten them, if they should continue to deal in or handle the hats of the plaintiffs, and among many other instances of like kind, the said William C. Hennelly and Daniel P. Kelly in behalf of all said defendants, and acting for them, demanded the firm of Triest & Co., wholesale dealers in hats, doing business in said San Francisco, that they should agree not to buy or deal in the hats made by the plaintiffs, under threats made by them to said firm of boycotting their business and that of their customers, and upon their refusing to comply with such demand and yield to such threats, the defendants
25 by their said agents caused announcement to be made in the newspapers of said city that said Triest & Co. were to be boycotted therefor, and that the labor council of San Francisco would be addressed by them for that purpose, and that they had procured a boycott to be declared by said labor council, and thereupon the defendants, through their said agents, Hennelly and Kelly, printed, published, issued and distributed to the retail dealers in hats, in several States upon the Pacific coast, the following circular, to wit:

"San Francisco Labor Council,
Affiliated with the American Federation of Labor,
Secretary's Office, 927 Market Street.
Rooms 405, 406, 407 Emma Spreckel's Building.
Meets every Friday, at 1159 Mission St.

Telephone South 447.
Address all communications to 927 Market Street.

SAN FRANCISCO, *July* 3, 1903.

To whom it may concern:

At a special meeting of the San Francisco Labor Council held on the above date, the hat jobbing concern known as Triest & Co., 116 Sansome St., San Francisco, was declared unfair for persistently patronizing the unfair hat manufacturing concern of D. E. Loewe & Co., Danbury, Connecticut, where the union hatters have been on strike, for union conditions, since August 20th, 1902. Triest & Co. will be retained on the unfair list as long as they handle the product of this unfair hat manufacturing concern. Union men do not usually patronize retail stores who buy from unfair jobbing houses or manufacturers. Under these circumstances, all friends of organized labor, and those desiring the patronage of organized workers, will not buy goods from Triest & Co., 116 Sansome St., San Francisco.

Yours respectfully G. B. BENHAM,
President S. F. Labor Council.

T. E. ZANT,
Secretary S. F. Labor Council. [L. S.]
W. C. HENNELLY,
D. F. KELLEY,
Representing United Hatters of North America."

26 Also the following, to wit:

"San Francisco Labor Council.
Affiliated with American Federation of Labor.
Secretary's Office, 927 Market Street.
Rooms 405, 406, 407 Emma Spreckel's Building.
Meets every Friday at 1159 Mission St.

Telephone, South 447.
Address all communications to 927 Market Street.

SAN FRANCISCO, *July* 14, 1903.

Messrs. —— ——.

GENTLEMEN: We beg leave to call your attention to the following products which are on the unfair list of the American Federation of Labor.

We do this in order that you refrain from handling these goods, as the patronage of the firms named below is taken by the organized workers as an evidence of a desire to patronize those who are opposed to the interests of organized labor. The declaration of unfairness

regarding the firms mentioned is fully sanctioned and will be supported to the fullest degree by the San Francisco Labor Council.

Trusting that you will be able to avoid the handling of these goods in the future, we are,

Yours respectfully, G. B. BENHAM, *President.*

T. E. ZANT, *Secretary.* [L. S.]

Unfair List.

Loewe & Co., Danbury, Conn., and Triest & Co., 116 Sansome St., San Francisco, Hat Manufacturers;

Cluett, Peabody & Co., Shirts and Collars, Troy, New York, and 562 Mission St., San Francisco, Cal.;

United Shirt and Collar Co., Troy, New York, and 25 Sansome St., San Francisco, Cal.;

Van Zandt, Jacobs & Co., Troy, New York, Greenbaum, Weil & Michaels, Selling Agents, 27 Sansome St., San Francisco, Cal.;"

and caused said circulars to be mailed to and personally delivered to the retail dealers in hats, and the other customers of said Triest & Co., upon the Pacific coast, and to many others, thereby causing the loss of many orders and customers to said Triest & Co., and to the plaintiffs, for the purpose of intimidating and coercing said Triest & Co., not to deal with the plaintiffs, and thereby caused the loss of many orders and customers to said Triest & Co., and to the plaintiffs.

27

22. By means of each and all of said acts done by the defendants in pursuance of said combination and conspiracy, they have greatly restrained, diminished, and, in many places, destroyed the trade and commerce of the plaintiffs with said wholesale dealers, in said States other than Connecticut, by the loss of many orders and customers directly resulting therefrom, and the plaintiffs have been injured in their business and property by reason of said combination and conspiracy, and the acts of the defendants done in pursuance thereof, and to carry the same into effect, which are declared to be unlawful by said Act of Congress, to the amount of eighty thousand ($80,000) dollars, to recover threefold which damages, under Section 7 of said Act, this suit is brought.

By force of the statute aforesaid, the plaintiffs claim two hundred and forty thousand ($240,000) dollars damages.

And you are hereby further commanded to leave a true and attested copy of this writ and of the accompanying complaint, at least twelve days before the session of the Court, to which it is made returnable, with The Danbury National Bank, The City National Bank, The Savings Bank of Danbury and The Union Savings Bank of Danbury, corporations duly organized and located and having their principal places of business in said Danbury, and the Fairfield County Savings Bank, Norwalk Savings Society, South Norwalk Savings Bank, National Bank of Norwalk, Fairfield County National Bank, Central National Bank and City National Bank of South Nor-

walk, corporations duly organized and located and having
28 their principal place of business in said town of Norwaik, and with each of them, as they are the agents, trustees and debtors of each of said defendants and are indebted to them.

Elmore S. Banks, of Fairfield, within said State and District of Connecticut, is recognized in the sum of $150 to prosecute, &c.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of said Circuit Court, at Hartford, in said district, this 31st day of August, 1903.

R. F. CARROLL,
Deputy Clerk.

DAVENPORT & BANKS,
Attorneys for the Plaintiffs.

UNITED STATES OF AMERICA, *District of Connecticut, ss:*

BRIDGEPORT, *September* —, 1903.

The within and foregoing is a true and attested copy of the original writ and complaint.

Attest:

——— ———,
Marshal for the District of Connecticut.

29 Circuit Court of the United States, District of Connecticut.

No. 538. At Law.

D. E. LOEWE and MARTIN FUCHS, Plaintiffs,
vs.
MARTIN LAWLOR ET AL., Defendants.

Demurrer to the Complaint.

Defendants demur to the complaint:

1. Because it does not appear therefrom that the plaintiffs and defendants are citizens of different States, and because it does not appear therefrom that the plaintiffs have been injured in their business or property by the defendants or their alleged associates or confederates by reason of anything forbidden or declared to be unlawful by the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies."

2. Because it does not appear from the complaint that any of the defendants or their alleged associates or confederates were or are engaged in interstate commerce; and does appear therefrom that the combination and conspiracy by reason of which the plaintiffs were injured in their property and business as alleged was a combination and conspiracy directed against the business of the plaintiffs only.

30 3. Because it does not appear from the complaint that the combination and conspiracy by reason of which the plain-

tiffs were injured in their business and property as alleged was in direct and immediate restraint of interstate commerce; and does appear therefrom that the direct and immediate purpose of said combination and conspiracy was particularly to bring the defendants' factory under union conditions.

4. Because it does not appear from the complaint that the alleged injury to the plaintiffs' business was by reason of a combination or conspiracy in restraint of interstate commerce; but does appear that the restraint of interstate commerce, if any, was merely incidental to an alleged conspiracy to injure the plaintiffs' business.

5. Because it is not alleged in said complaint that the defendants or any of them entered into any agreement, combination or conspiracy to restrain the carriage or transportation of the plaintiffs' hats among the several States, or to restrain the plaintiffs from soliciting or making contracts for the sale and delivery of hats to customers in States other than Connecticut.

6. Because the agreement, combination and conspiracy by reason of which the plaintiffs' business was injured as alleged relates solely to the plaintiffs' hats before they have become, or after they have ceased to be, subjects of interstate commerce.

7. Defendants demur to so much of paragraph 14 as relates to the allegation of the past employment of agents to enforce and carry into effect alleged boycotts declared prior to July 25, 1902, against the plaintiffs' competitors in business, intending thereby to demur specifically to the following language: "Including those in
31 aid of the combined scheme, purpose and effort hereinafter stated to force all the manufacturers of fur hats in the United States, including the plaintiffs, to unionize their factories, by restraining and destroying their interstate trade and commerce, as hereinafter stated."

(1.) Because the part of said paragraph so demurred to is irrelevant, immaterial and presents no fact issuable in this case.

(2.) For the reasons hereinafter stated in the demurrer to paragraph 16.

8. Defendants demur to so much of paragraph 15 of the complaint as alleges that the American Federation of Labor, and its component parts, have frequently, and prior to July 25, 1902, declared boycotts, at the request of the defendants, against other hat manufacturers, competitors of the plaintiffs, to wit, to the following portion of said paragraph 15: "and it and its component parts have frequently declared boycotts, at the request of the defendants, against the business and product of various hat manufacturers, and have vigorously prosecuted the same by and through the powerful machinery at their command as aforesaid, in carrying out their general scheme herein stated, to the great damage and loss of business of said manufacturers, and particularly during the years 1901 and 1902 they declared, prosecuted and waged, at the request of the defendants and their agents, a boycott against the hats made by and the business of H. H. Roelofs & Co., of Philadelphia, Pa., until, by causing them great damage and loss of business, they coerced them into yielding to the demand of the defendants and

their agents, that the said factory of said Roelofs & Co. be unionized, as termed by the defendants, and into agreeing to employ, and employing exclusively, members of their said combination in the making and finishing departments of said factory, and in large
32 measure surrendering to the defendants and their agents the control of said factory and business,"

(1.) Because the portion of said paragraph so demurred to is irrelevant, immaterial and presents no fact issuable in this cause.

(2.) For the reasons hereinafter stated in the demurrer to paragraph 16.

9. Defendants demur to paragraph 16 of the complaint because it appears from the complaint that the plaintiffs were not injured in their business or property by reason of the alleged combined scheme and effort set forth in said paragraph; but were injured, if at all, by reason of the subsequent particular combination and conspiracy alleged in paragraph 20 of the complaint to have been entered into on the 25th day of July, 1902.

(2.) Because the allegations of said paragraph are immaterial, irrelevant and present no fact issuable in this cause.

10. Defendants demur to paragraph 17 of the complaint:

(1.) Because the allegations of said paragraph are irrelevant, immaterial and present no fact issuable in this cause.

(2.) As to that part of said paragraph which contains the alleged statements and announcements of the defendants in respect to the factories alleged to have been unionized, because the same is a statement of evidence only, and the incorporation thereof in the complaint is an infraction of the rules of pleading, and an attempt to get said evidence before the jury irrespective of its admissibility, and in advance of any ruling thereon.

33 11. Defendants demur to all of paragraph 18 except the words "and each and all of the defendants in this suit did the several acts hereinafter stated either by themselves or their agents by them thereto fully authorized," because said paragraph, save for said excepted portion, is immaterial and irrelevant and presents no fact issuable in this cause.

12. Defendants demur to the following portion of paragraph 19 of the complaint, to wit: "And then notified the plaintiffs that if they failed to yield to said demand, the defendants and all the other members of the said combination known as the United Hatters of North America, would resort to their said usual and well known methods to compel them so to do,"

(1.) Because the same is not a direct statement of the fact intended to be alleged, but a statement of the evidence on which the pleader intends to rely to establish the fact.

(2.) Because said mode of alleging that the parties referred to in said paragraph threatened to break up the defendants' business unless their demands were complied with, is an indirect and circuitous allegation of said threat, resorted to by the pleader for the purpose of setting forth in said complaint the evidence in regard to the alleged usual and well known methods of the defendants, and

of submitting said evidence to the jury in advance of any ruling upon its admissibility.

13. Defendants also demur to so much of paragraph 19 as recites the language written or spoken in which it is alleged that the plaintiffs replied to the defendants' demand,

(1.) Because the same is irrelevant and immaterial and presents no facts issuable in the cause.

34 (2.) Because it is a circuitous, indirect and redundant mode of alleging that the defendants refused to comply with the plaintiffs' demand.

(3.) Because it is an attempt on the part of the pleader to submit to the jury self-serving declarations of the defendants as to their motives.

14. Defendants demur to so much of paragraph 20 as alleges that the defendants entered into a combination and controversy "to cause, by means of threats and coercion, and without warning or information to the plaintiffs, the concerted and simultaneous withdrawal of all the makers and finishers of hats then working for them, who were not members of their said combination, The United Hatters of North America, as well as those who were such members, and thereby cripple the operation of the plaintiffs' factory, and prevent the plaintiffs from filling a large number of orders then on hand, from such wholesale dealers in States other than Connecticut, which they had engaged to fill and were then in the act of filling, as was well known to the defendants," because said allegation is neither in itself, nor in connection with the other allegations of said complaint, relevant or material to the principal allegation of said paragraph that the defendants entered into a conspiracy in violation of the provisions of the Act of Congress approved July 2, 1890.

15. Defendants demur to so much of said paragraph 20 as follows, to wit: "In connection therewith to declare a boycott against all hats made for sale and sold and delivered, or to be so sold or delivered, by the plaintiffs to said wholesale dealers in States other than Connecticut, and to actively boycott the same and the business of those who should deal with them, and thereby prevent the sale of the same by those in whose hands they might be or come through said interstate trade in said several States; to pro-

35 cure and cause others of said combinations united with them in said American Federation of Labor, in like manner to declare a boycott against and to actively boycott the same and the business of such wholesale dealers as should buy or sell them, and of those who should purchase them from such wholesale dealers; to intimidate such wholesale dealers from purchasing or dealing in the hats of the plaintiffs by informing them that the American Federation of Labor had declared a boycott against the product of the plaintiffs and against any dealer who should handle it, and that the same was to be actively pressed against them, and by distributing circulars containing notices that such dealers and their customers were to be boycotted; to threaten with a boycott those

customers who should buy any goods whatever, even though union made, of such boycotted dealers, and at the same time to notify such wholesale dealers that they were at liberty to deal in the hats of any other non-union manufacturer of similar quality to those made by the plaintiffs, but must not deal in the hats made by the plaintiffs, under threats of such boycotting;" because said allegation is neither in itself, nor in connection with the other allegations of said complaint, relevant or material to the principal allegations of said paragraph that the defendants entered into a conspiracy in violation of the provisions of the Act of Congress approved July 2, 1890.

16. Defendants demur to so much of paragraph 20 as follows: "to falsely represent to said wholesale dealers and their customers that the plaintiffs had discriminated against the union men in their employ, had thrown them out of employment because they refused to give up their union cards and teach boys, who were intended to take their places after seven months' instruction, and had driven their employees to extreme measures 'by their persistent, un-
36 fair and un-American policy of antagonizing union labor, forcing wages to a starvation scale, and giving boys and cheap unskilled foreign labor preference over experienced and capable union workmen,' in order to intimidate said dealers from purchasing said hats by reason of the prejudice thereby created against the plaintiffs and the hats made by them among those who might otherwise purchase them; because said allegation is neither in itself, nor in connection with the other allegations of said complaint, relevant or material to the principal allegation of said paragraph, that the defendants entered into a conspiracy in violation of the provisions of the Act of Congress approved July 2, 1890.

17. Defendants demur to so much of paragraph 20 as follows: "To use the said union label of said The United Hatters of North America as an instrument to aid them in carrying out said conspiracy and combination against the plaintiffs and their customers' interstate trade aforesaid, and in connection with the boycotting above mentioned, for the purpose of describing and identifying the hats of the plaintiffs, and singling them out to be so boycotted;" because said allegation is neither in itself, nor in connection with the other allegation of the said complaint, relevant or material to the principal allegation of said paragraph that the defendants entered into a conspiracy in violation of the provisions of the Act of Congress approved July 2, 1890.

18. Defendants demur to so much of paragraph 20 as follows: "to employ a large number of agents to visit said wholesale dealers and their customers, at their several places of business, and threaten them with loss of business if they should buy or handle the hats of the plaintiffs and thereby prevent them from buying said
37 hats, and in connection therewith to cause said dealers to be waited upon by committees representing large combinations of persons in their several localities to make similar threats to them; to use the daily press in the localities where such wholesale

dealers reside, and do business, to announce and advertise the said boycotts against the hats of the plaintiffs and said wholesale dealers, and thereby make the same more effective and oppressive, and to use the columns of their said paper, *The Journal of the United Hatters of North America*, for that purpose, and to describe the acts of their said agents in prosecuting the same," because said allegation is neither in itself, nor in connection with the other allegations of said paragraph, relevant or material to the principal allegation of said complaint that the defendants entered into a conspiracy in violation of the provisions of the Act of Congress approved July 2d, 1890.

Defendants demur to the whole of paragraph 20 of the complaint for the reasons stated in paragraphs 1, 2, 3 and 4 of this demurrer, and said paragraphs of demurrer are hereby referred to and made part of this paragraph.

19. Defendants demur to the whole of paragraph 21 of the complaint.

(1.) Because it does not appear therefrom, or from the rest of the complaint, that the acts therein alleged were done in pursuance of a combination or conspiracy to restrain trade or commerce among the several States.

(2.) Because the acts alleged do not amount to and constitute a restraint of trade or commerce among the several States.

20. Defendants demur to so much of said paragraph 21 as follows:

"21. Afterwards, to wit, on July 25th, 1902, and on divers
38 days since hitherto, the defendants in pursuance of said combination and conspiracy, and to carry the same into effect, did cause the concerted and simultaneous withdrawal, by means of threats and coercion made by them, and without previous warning or information thereof to the plaintiffs, of all but ten of the non-union makers and finishers of hats then working for them, as well as all of their union makers and finishers, leaving large numbers of hats in an unfinished and perishable condition, with intent to cripple and did thereby cripple the operation of the plaintiffs' factory until the latter part of October, 1902, and thereby prevented the plaintiffs from filling a large number of orders then on hand from such wholesale dealers in States other than Connecticut, which they had engaged to fill and were then in the act of filling, as was well known to the defendants, and thereby caused the loss to the plaintiffs of many orders from said wholesale dealers in other States, and greatly hindered and delayed them in filling such orders." (1) because the acts alleged do not either alone or in connection with the other alleged conduct of the defendants constitute a restraint of trade or commerce among the several States.

(2.) Because it does not appear from said complaint that said acts were done in pursuance of a combination or conspiracy to restrain trade or commerce among the several States.

21. Defendants demur to so much of said paragraph 21 as follows:

"and falsely representing to said wholesale dealers, their customers,

and the public generally in States other than Connecticut, that the plaintiffs had discriminated against the union men in their employ, and had discharged or thrown out of employment their union men in August, 1902, that they had driven their employees to extreme measures by their persistent, unfair and un-American policy
39 of antagonizing union labor, forcing wages down to a starvation scale and giving boys and cheap, unskilled foreign labor preference over experienced and capable workmen; that skilled hatters had been discharged from said factory for no other cause than their devotion and adherence to the principles of organized labor in refusing to give up their union cards, and to teach the trade to boys who were intended to take the place of union workmen after seven months' instruction, and that unable to submit longer to a system of petty tyrannies that might be tolerated in Siberia, but could not be borne by independent Americans, the workmen in the factory inaugurated the strike to compel the firm to recognize their rights, in order to prejudice, and did thereby prejudice the public, against the plaintiffs and their product, and in order to intimidate, and did thereby intimidate said wholesale dealers and their customers, in States other than Connecticut, from purchasing hats from the plaintiffs by reason of the fear of the prejudice created against said hats;"

(1.) Because the acts alleged do not either alone or in connection with the other alleged conduct of the defendants constitute a restraint of trade to commerce among the several States.

(2.) Because it does not appear from said complaint that said acts were done in pursuance of a combination or conspiracy to restrain trade or commerce among the several States.

21. Defendants demur to so much of said paragraph 21 as follows:

"and in connection therewith declared a boycott against all hats made for and so sold and delivered, and to be so sold and delivered to said wholesale dealers, in States other than Connecticut, and actively boycotted the same, and the business of those who
40 dealt in them in such other States, and thereby restrained and prevented the purchase of the same from the plaintiffs, and the sale of the same by those in whose hands they were, or might thereafter be, in the course of such interstate trade, and caused and procured others of said combinations united with them in the said American Federation of Labor to declare a boycott against the plaintiffs, their product and against the business of such wholesale dealers in States other than Connecticut, as should buy or sell them, and of those who should purchase from such wholesale dealers any goods whatever, and further intimidated said wholesale dealers from purchasing or dealing in the hats made by the plaintiffs, as aforesaid, by informing them that the American Federation of Labor had declared a boycott against the hats of the plaintiffs and against any dealer who should handle them, and that said boycott was to be actively pressed against them, and by sending agents and committees from various of said labor organizations to threaten said wholesale dealers and their customers with a boycott from them if they purchased or handled the goods of the plaintiffs, and by distributing

in San Francisco, California, and other places, circulars containing notices that such dealers and their customers were to be boycotted and threatened with a boycott, and did actively boycott the customers who did or should buy any goods whatever, even though union made, of such wholesale dealers so boycotted, and used the daily press to advertise and announce said boycott, and the measures taken in pursuance thereof by said labor organizations, particularly the *San Francisco Bulletin,* in its issues of July 2 and July 4, 1903, and a daily paper published in Richmond, Virginia, on December 10, 1902, and notified such wholesale dealers in States other than in Connecticut that they were at liberty to deal in the hats of any other non-union hat manufacturers of similar quality to those of the plaintiffs, but that they must not deal in the hats made by the
41 plaintiffs, under threats of being boycotted for so doing,"

(1) because the acts alleged do not, either alone or in connection with the other alleged conduct of the defendants constitute a restraint of trade or commerce among the several States.

(2) Because it does not appear from said complaint that said acts were done in pursuance of a combination or conspiracy to restrain trade or commerce among the several States.

23. Defendants demur to so much of said paragraph 21 as follows: "and used the said union label of the United Hatters of North America as an instrument to aid them in carrying out said combination and conspiracy against the plaintiffs and their customers' interstate trade as aforesaid, and in connection with such boycotting by using the same and its absence from the hats of the plaintiffs, as an insignia or device to indicate to the purchaser that the hats of the plaintiffs were to be boycotted, and to point them out for that purpose."

(1) Because the acts alleged do not either alone or in connection with the other alleged conduct of the defendants constitute a restraint of trade or commerce among the several States.

(2) Because it does not appear from said complaint that said acts were done in pursuance of a combination or conspiracy to restrain trade or commerce among the several States.

24. Defendants demur to all the rest and remainder of said paragraph 21 not referred to in the four preceding paragraphs of the demurrer,

(1) Because the acts alleged do not either alone or in connection with the other alleged conduct of the defendants constitute a
42 restraint of trade or commerce among the several States.

(2) Because it does not appear from said complaint that said acts were done in pursuance of a combination or conspiracy to restrain trade or commerce among the several States.

25. The defendants demur to so much of said paragraph 21 as follows:

"and caused said circulars to be mailed to and personally delivered to the retail dealers in hats, and the other customers of said Triest & Co., upon the Pacific coast, and to many others, thereby causing the loss of many orders and customers — said Triest & Co., and to the plaintiffs, for the purpose of intimidating and coercing the said

Triest & Co., not to deal with the plaintiffs, and thereby caused the loss of many *others* and customers to said Triest & Co., and to the plaintiffs" in so far as the same alleges the loss of money, orders and customers to the said Triest & Co., because said allegation is immaterial and irrelevant, and does not state a fact issuable in this cause.

(2) Because said Triest & Co. are not parties to this action.

Defendants by DEFOREST & KLEIN,
JOHN H. LIGHT,
H. W. TAYLOR,
BRISTOL, STODDARD, BEACH & FISHER, *Their Att'ys.*

43 United States Circuit Court, District of Connecticut.

No. 538. Law.

DIETRICH E. LOEWE and MARTIN FUCHS
vs.
MARTIN LAWLOR ET AL.

Sur Demurrer.

PLATT, *District Judge:*

Some of the grounds of demurrer are general, attacking the entire complaint, and others are special, affecting only certain portions which are said to be irrelevant or evidential. It is with the former class that we are at this moment particularly concerned.

The complaint, stripped to the bone, sets forth in substance the following situation:

The defendants are members of a local Union in Danbury, Connecticut, which is a subordinate branch of the United Hatters of North America, which embraces several States and many members, and is, in its turn, subordinate to the American Federation of Labor, which embraces more States and more members.

The defendants, by reason of such membership, were enabled to put into operation certain means to accomplish their purpose, and to such means they resorted with vigor and effect. They undertook thereby to compel the plaintiffs, against their will, to unionize their factory.

Their associates, with their assistance, had prior thereto employed similar means toward divers factories in other States and had
44 succeeded. The defendants paraded such success before the plaintiffs, and a threat to treat them in the same way was one of the means which they employed to coerce the plaintiffs into yielding to their demands.

They then withdrew from plaintiffs' employment and tried with considerable success to prevent others from working for them. With the help of their associates in the larger bodies to which they were affiliated, they declared a boycott upon hats made by plaintiffs which were found in the hands of plaintiffs' customers in other States,

notably in California and Virginia. In such action they took advantage of the absence from plaintiffs' hats of the Union label, which by the State of Connecticut the United Hatters were authorized to affix to hats made under the supervision of their members.

In these ways they caused the plaintiffs a deal of damage, and (according to the complaint) limited and restrained plaintiffs' interstate trade in hats.

It must be obvious from the foregoing recital, that the defendants by the means therein described, sought to curtail, and if possible, destroy the plaintiffs' production of hats at home, and with the assistance of their friends, to curtail, and if possible, destroy the distribution of such product after it had become settled into the stock of goods in the hands of plaintiffs' customers in other States.

There is no allegation which suggests that the means of transporting plaintiffs' product, or the product itself while being transported, were touched, handled, obstructed, or in any manner actually interfered with. There is no allegation that the defendants are in any way engaged in interstate commerce.

The argument for the plaintiffs is, that by entering into a scheme to curtail the production at home, and the distribution by customers abroad, the defendants have formed a combination to limit and restrain plaintiffs' trade between the two points, which is interstate trade, and that such restraint is the direct, positive, and inevitable result of the general scheme.

The manufacturer of the hats before they leave the factory in Danbury is not interstate commerce, nor are the hats themselves up to that time the subject of interstate commerce. The distribution of the hats from the hands of the customers in other States to the ultimate consumer is not interstate commerce, nor are the hats themselves during such distribution the subject of interstate commerce.

The real question is, whether a combination which undertakes to interfere simultaneously with both actions is one which directly affects the transportation of the hats from the place of manufacture to the place of sale.

It is not perceived that the Supreme Court has as yet so broadened the interpretation of the Sherman Act, that it will fit such an order of facts as this complaint presents. What it may do, if the matter comes before it, is, in my judgment, very uncertain.

If the demurrer, in so far as it attacks the complaint as a whole, shall be overruled and the defendants put to their answer, a jury trial must follow in orderly sequence, and after a verdict the end would still be far away. A contested trial might consume weeks of time and the expense, both to the Court and parties, would be enormous.

It is deemed wise, for these reasons, to sustain the demurrer, and in this situation it is hoped that the Court may be pardoned for not entering into an analysis of the contentions put forth by the opposing parties. Such contentions and the independent thoughts which they aroused were necessarily examined with care, in order that this present conclusion could be reached, and if in making such exami-

nation a further and final conclusion was reached, it would serve no useful purpose to make it known at this juncture.

46 If the matter shall come back to me for further action, observations upon the questions advanced by the special grounds of demurrer would be gratefully read, and might tend to avoid unreasonable delay and expense at a later stage of the proceedings.

Let the complaint be dismissed.

Messrs. Davenport & Banks, for Plaintiffs.

John K. Beach, Esq., John H. Light, Esq., Messrs. DeForest & Klein, and Howard W. Taylor, for Defendants.

47 United States Circuit Court, District of Connecticut.

At a Stated Term of the Circuit Court of the United States for the District of Connecticut, held at Hartford, on the 24th day of December, A. D. 1906.

Present: Honorable James P. Platt, Judge.

No. 538. At Law.

D. E. LOEWE and MARTIN FUCHS, Both of the Town of Danbury, Connecticut, Plaintiffs,

vs.

MARTIN LAWLOR, JOHN CORDS, GEORGE W. MOREHOUSE, GEORGE H. Gilbert, William P. Bailey, Howard S. Gilbert, Charles Green, Charles Lathrop, and John McDole, all of the Town of Bethel, Connecticut; Charles J. Barrett, Martin Gorman, Peter Gallagher, Daniel P. Kelly, Simon Blake, Hugh C. Shalvoy, Michael C. Griffin, Patrick Connolly, Albert Hoyt, and John Morris, all of the Town of Danbury, Connecticut; Robert Pearson, John E. Paul, Charles Flynn, John W. Sculley, Stephen Carlin, Charles Moore, James Whitney, William A. Brennan, and Homer Rockwell, Frederick Taylor, Owen Reiley, Charles Smith, Edward Cunningham, George A. Davis, George Gerrish, Peter Ward, Fanton W. Beers, Albert Berg, Addison Hathaway, John McNamara, John Redway, Ernest Talmadge, W. J. Weisheit, Daniel Riordan, John E. Rooney, Thomas Saunders, Max Singerwode, John Spendlove, Peter F. Kearney, Patrick Keating, James Kinnane, Thomas Layhe, S. Wallace Osborn, all of the Town of Norwalk, Connecticut; Barney Murphy, Owen Murray, John

48 Halpin, John Kane, Edward Manion, Edward Culhane, Edward Johnson, Patrick Troy, Patrick Wixted, Henry Gilbert, Starr Bassett, William Ohler, William Ochs, Myron Trowbridge, Frederick Benedict, Orrin Smith, Charles Frost, Ruben Johnson, Virgil Dibble, Charles Bailey, William Stone, E Romaine Barnum, Byron Morgan, Joseph Burr, Levi Short, Henry C. Judd, T. Archibald Evans, all of said Town of Bethel; Theophilus Abieniste, Andrew Aitkin, Nicholas W. Barzin, Thomas

H. Allen, Daniel H. Barnes, Nicholas W. Allen, Jerome W. Bates, Charles Beckett, John Beckett, Jr., Clemens Beschele, Frederick S. Blackburn, John Blake, Herman H. Bohmann, Nelson H. Booth, James N. Boughey, Thomas Boyd, John Bradshaw, Peter J. Brennan, Alphonse Bresson, Theodore Bright, Orrin L. Bronson, Byron S. Brooks, Thomas D. Brooks, Andrew G. Brown, William F. Burns, Chauncey H. Butler, Stephen F. Butler, William H. Butler, John Byrone, James P. Callahan, John J. Callahan, Achille Canale, Thomas J. Cassidy, William Clancy, Elmer R. Clark, John H. Collins, Lewy W. Comes, Michael W. Corbett, James D. Costello, John H. Craft, Byron W. Crane, James Crotty, John Crotty, Michael Crowe, Patrick Culligan, Peter T. Currie, William Deakin, George F. Denton, George Dickens, James Dillon, Thomas J. Durkin, James Durnin, William S. Dutcher, John Dyer, John Ellegett, Patrick Ellegett, Patrick Elliott, John G. Ely, Carl Erdman, Timothy H. Farrell, Patrick J. Feeley, Patrick Fennell, Patrick J. Fisher, Patrick Fitzgerald, Patrick Flannagan, Emil Floyske, Thomas Foley, Christian Garni, William E. Geartner, John Gilbride, Patrick Gildea, George J. Goebel, Wright Hampson, David J. Hardy, Alexander Harkness, John Harkness, Patrick Hart, John Hassett, Stephen Havran, Michael Hennessy, George M. Merrick, Ernest H. Heuser, Charles
49 A. Hodge, Adolph Holdeichel, Nathan C. Hoy, William Humphries, Patrick F. Hunt, Charles W. Hurd, Michael Hurd, Patrick E. Jeffrey, Daniel Kearns, Martin Keating, Thomas Keenan, Michael F. Keeney, John Keough, Charles J. King, Frank Kornhass, Frank E. Krebs, Martin Lauf, John M. Lawler, Edward D. Lees, Thomas Leonard, William E. Luke, Michael F. Lynch, George F. Marshall, Jeremiah McCarthy, Patrick J. McCarthy, Patrick T. McCarthy, Martin McCue, Thomas E. McGauley, Martin McGettrick, James F. McGlone, John McGlone, Peter McGlone, Patrick McGrath, Charles F. McHan, Thomas McHugh, Daniel McInery, Frank Meath, Henry Messer, Henry C. Michael, George J. Miller, John Miller, Jr., Patrick Moffit, Gustave Mougin, Eugene L. Mulkin, Daniel Murphy, Timothy Murray, John B. Nowlan, William V. Nowlan, George T. Oakley, John O'Boy, Peter O'Boy, Louis E. Orton, Daniel J. Osborne, Alvah S. Pearce, George H. Phillips, Peter Picken, Arthur L. Pickett, John Pribula, Jacob Prinz, Christian Reinhold, Frank Rhode, John Rooney, Frank E. Seaman, Louis Schak, Charles Shaffer, Frederick L. Stahl, Nicholas Streibig, George Stuckney, Stephen Stuckney, Michael E. Sullivan, Mark Sullivan, William S. Sullivan, Joseph Tosi, Thomas E. Waters, Frank K. Wildman, Samuel S. Wilson, Michael Connors, John J. Culhane, and John Leonard, all of the Town of Danbury, Connecticut, Defendants.

Judgment.

This cause came to this Court, by writ and complaint demanding $240,000 damages, on the second Tuesday of October, 1903, when the defendants appeared specially and pleaded in abatement, as on

file; and thence to the second day of March, 1904, when the
50 plaintiff's demurred to said plea in abatement; and thence to the 9th day of June, 1904, when the Court sustained the demurrer to said plea in abatement, and overruled said plea; and thence to the 26th day of February, 1906, when the defendants demurred to the complaint, as on file; and thence to the 7th day of December, 1906, when the Court having heard the parties, and on due consideration had, sustained the first, second, third, fourth, fifth and sixth grounds of said demurrer, as contained in the first six paragraphs thereof, and ordered that the complaint be dismissed, and the plaintiffs duly excepted to the rulings of the Court in sustaining said several grounds of demurrer in said several paragraphs thereof and in ordering the complaint to be dismissed.

Whereupon, the plaintiffs not asking to amend their complaint, it is ordered and adjudged, that the complaint in said action be, and the same is hereby, dismissed, with costs taxed in favor of the defendants in the sum of ten (10) dollars.

By the Court.

R. F. CARROLL,
Dep. Clerk.

A true record.
Attest:
E. E. MARVIN, *Clerk.*

51 Circuit Court of the United States for the District of Connecticut.

At Law. No. 538.

D. E. LOEWE and MARTIN FUCHS
vs.
MARTIN LAWLOR ET AL.

Assignment of Errors and Prayer for Reversal.

Come now the plaintiffs in the above entitled cause by Davenport & Banks, their attorneys, and pray for a reversal of the judgment entered in the above entitled cause in favor of the defendants and against the plaintiffs, on or about the 24th day of December, 1906, and as ground for reversal set forth and rely upon the following assignment of errors, to wit:

1. That the said Court erred in sustaining the first, second, third, fourth, fifth and sixth grounds of the demurrer interposed by the defendants to the complaint of the plaintiffs, filed herein, and contained in the first six paragraphs thereof, and in deciding, ordering and adjudging that the complaint in said action be dismissed therefor.

2. That said Court erred in holding and deciding that the complaint of the plaintiffs did not state facts sufficient to constitute a cause of action against the defendants, and in ordering the complaint dismissed therefor.

3. That said Court erred in sustaining the first ground of
52 the said demurrer as contained in the first paragraph thereof, to wit: "Because it does not appear therefrom that the plaintiffs and defendants are citizens of different States, and because it does not appear therefrom that the plaintiffs have been injured in their business or property by the defendants or their alleged associates or confederates by reason of anything forbidden or declared to be unlawful by the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies;" and in ordering the complaint dismissed therefor.

4. That said Court erred in sustaining the second ground of the said demurrer as contained in the second paragraph thereof, to wit: "Because it does not appear from the complaint that any of the defendants, or their alleged associates or confederates, were or are engaged in interstate commerce; and does appear therefrom that the combination and conspiracy by reason of which the plaintiffs were injured in their property and business, as alleged, was a combination and conspiracy directed against the business of the plaintiffs only;" and in ordering the complaint dismissed therefor.

5. That said Court erred in sustaining the third ground of the said demurrer as contained in the third paragraph thereof, to wit: "Because it does not appear from the complaint that the combination and conspiracy by reason of which the plaintiffs were injured in their business and property, as alleged, was in direct and immediate restraint of interstate commerce; and does appear therefrom that the direct and immediate purpose of said combination and conspiracy was particularly to bring the plaintiffs' factory under union conditions;" and in ordering the complaint dismissed therefor.

6. That said Court erred in sustaining the fourth ground of the said demurrer as contained in the fourth paragraph thereof,
53 to wit: "Because it does not appear from the complaint that the alleged injury to the plaintiff's business was by reason of a combination or conspiracy in restraint of interstate commerce; but it does appear that the restraint of interstate commerce, if any, was merely incidental to an alleged conspiracy to injure the plaintiffs' business;" and in ordering the complaint dismissed therefor.

7. That the said Court erred in sustaining the fifth ground of the said demurrer as contained in the fifth paragraph thereof, to wit: "Because it is not alleged in said complaint that the defendants, or any of them, entered into any agreement, combination or conspiracy to restrain the carriage or transportation of the plaintiffs' hats among the several States, or to restrain the plaintiffs from soliciting or making contracts for the sale and delivery of hats to customers in States other than Connecticut;" and in ordering the complaint dismissed therefor.

8. That said Court erred in sustaining the sixth ground of the said demurrer as contained in the sixth paragraph thereof, to wit: "Because the agreement, combination and conspiracy by reason of which the plaintiffs' business was injured as alleged, relates solely

to the plaintiffs' hats before they have become, or after they have ceased to be, subjects of interstate commerce"; and in ordering the complaint dismissed therefor.

9. That said Court erred in rendering judgment in favor of the defendants and against the plaintiffs, dismissing the complaint.

DAVENPORT & BANKS,
Attorneys for Plaintiffs.

Know all men by these presents, That we, William A. Redden, of Bridgeport, Fairfield County, Connecticut, as principal,
54 and Elmore S. Banks, of the Town of Fairfield, Fairfield County, Connecticut, as surety, are held and firmly bound unto the defendants in error, Martin Lawlor, John Cords, George W. Morehouse, George H. Gilbert, William P. Bailey, Howard S. Gilbert, Charles Green, Charles Lathrop and John McDole, all of the Town of Bethel, Connecticut; Charles J. Barrett, Martin Gorman, Peter Gallagher, Daniel P. Kelley, Simon Blake, Hugh C. Shalvoy, Michael C. Griffin, Patrick Connolly, Albert Hoyt and John Morris, all of the Town of Danbury, Connecticut; Robert Pearson, John E. Paul, Charles Flynn, John W. Scully, Stephen Carlin, Charles Moore, James Whitney, William A. Brennan and Homer Rockwell, all of the Town of Norwalk, Connecticut; Frederick Taylor, Owen Reiley, Charles Smith, Edward Cunningham, George A. Davis, George Gerrish, Peter Ward, Fanton W. Beers, Albert Berg, Addison Hathaway, John McNamara, John Redway, Ernest Talmadge, W. J. Weisheit, Daniel Riordan, John E. Rooney, Thomas Saunders, Max, Singerwode, John Spendlove, Peter F. Kearney, Patrick Keating, James Kinnane, Thomas Layhe, S. Wallace Osborn, all of the Town of Norwalk, Connecticut; Barney Murphy, Owen Murray, John Halpin, John Kane, Edward Manion, Edward Culhane, Edward Johnson, Patrick Troy, Patrick Wixted, Henry Gilbert, Starr Bassett, William Ohler, William Ochs, Myron Trowbridge, Frederick Benedict, Orrin Smith, Charles Frost, Ruben Johnson, Virgil Dibble, Charles Bailey, William Stone, E. Romaine Barnum, Byron Morgan, Joseph Burr, Levi Short, Henry C. Judd, T. Archibald Evans, all of the Town of Bethel; Theophilus Abieniste, Andrew Aitkin, Nicholas W. Allen, Thomas H. Allen, Daniel H. Barnes, Nicholas W. Barzin, Jerome W. Bates, Charles Beckett, John Beckett, Jr., Clemens Beschele, Frederick S. Blackburn, John Blake, Herman H. Bohmann, Nelson H. Booth, James N. Bougbey, Thomas Boyd, John Bradshaw, Peter J. Brennan, Alphonse Bresson, Theodore Bright, Orrin L. Bronson, Byron S. Brooks,
55 Thomas D. Brooks, Andrew G. Brown, William F. Burns, Chauncey H. Butler, Stephen F. Butler, William H. Butler, John Byrone, James P. Callahan, John J. Callahan, Achille Canale, Thomas J. Cassidy, William Clancy, Elmer R. Clark, John H. Collins, Lewy W. Comes, Michael W. Corbett, James D. Costello, John H. Craft, Byron W. Crane, James Crotty, John Crotty, Michael Crowe, Patrick Culligan, Peter T. Currie, William Deakin, George F. Denton, George Dickens, James Dillon, Thomas J. Durkin,

James Durnin, William S. Dutcher, John Dyer, John Ellegett, Patrick Ellegett, Patrick Elliott, John G. Ely, Carl Erdman, Timothy H. Farrell, Patrick J. Feeley, Patrick Fennell, Patrick J. Fisher, Patrick Fitzgerald, Patrick Flannagan, Emil Floyske, Thomas Foley, Christian Garni, William E. Geartner, John Gilbride, Patrick Gildea, George J. Goebel, Wright Hampson, David J. Hardy, Alexander Harkness, John Harkness, Patrick Hart, John Hassett, Stephen Havran, Michael Hennessy, George M. Herrick, Ernest H. Heuser, Charles A. Hodge, Adolph Holdeichel, Nathan C. Hoy, William Humphries, Patrick F. Hunt, Charles W. Hurd, Michael Hurd, Patrick E. Jeffrey, Daniel Kearns, Martin Keating, Thomas Keenan, Michael F. Kenney, John Keough, Charles J. King, Frank Kornhass, Frank E. Krebs, Martin Lauf, John M. Lawler, Edward D. Lees, Thomas Leonard, William E. Luke, Michael F. Lynch, George F. Marshall, Jeremiah McCarthy, Patrick J. McCarthy, Patrick T. McCarthy, Martin McCue, Thomas E. McGauley, Martin McGettrick, James F. McGlone, John McGlone, Peter McGlone, Patrick McGrath, Charles F. McHan, Thomas McHugh, Daniel McInerey, Frank Meath, Henry Messer, Henry C. Michael, George J. Miller, John Miller, Jr., Patrick Moffit, Gustave Mougin, Eugene L. Mulkin, Daniel Murphy, Timothy Murray, John B. Nolan, William V. Nowlan, George T. Oakley, John O'Boy,
Peter O'Boy, Louis E. Orton, Daniel J. Osborne, Alvah S.
56 Pearce, George H. Phillips, Peter Picken, Arthur L. Pickett,
John Pribula, Jacob Prinz, Christian Rheinhold, Frank Rhode, John Rooney, Frank E. Seaman, Louis Schak, Charles Shaffer, Frederick L. Stahl, Nicholas Streibig, George Stuckey, Stephen Stucky, Michael E. Sullivan, Mark Sullivan, William S. Sullivan, Joseph Tosi, Thomas E. Waters, Frank K. Wildman, Samuel S. Wilson, Michael Connors, John J. Culhane and John Leonard, all of the Town of Danbury, Connecticut, in the full and just sum of two hundred and fifty dollars, to be paid to the said defendants in error, their certain attorneys, executors, administrators and assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 31st day of December, in the year of our Lord 1906.

Whereas, lately at a Circuit Court of the United States for the District of Connecticut, in a suit between Deitrich E. Loewe and Martin Fuchs, both of said Danbury, plaintiffs, and the above named defendants in error as defendants, a judgment was rendered against the said Dietrich E. Loewe and Martin Fuchs, and the said Dietrich E. Loewe and Martin Fuchs, having obtained a writ of error, and filed a copy thereof, in the Clerk's office of the said Court, to reverse the judgment in the aforesaid suit, and a citation directed to the said defendants in error above named, citing and admonishing them to be and appear at a Session of the United States Circuit Court of Appeals for the Second Circuit to be holden

at the City of New York, in the State of New York, in said Circuit, on the 28th day of January, 1907, next,

Now, the condition of the above obligation is such that if the said Dietrich E. Loewe and Martin Fuchs shall prosecute said writ of error to effect, and answer all damages and costs, if they
57 fail to make the said plea good, then the obligations to be void; else to remain in full force and virtue.

WILLIAM A. REDDEN. [L. S.]
ELMORE S. BANKS. [L. S.]

Sealed and delivered in the presence of—

MARTHA L. MALLINSON.
DANIEL DAVENPORT.

Approved by
JAMES P. PLATT, *U. S. Judge.*

The Circuit Court of the United States for the District of Connecticut.

No. 538. At Law.

L. E. LOEWE and MARTIN FUCHS
vs.
MARTIN LAWLOR ET AL.

Petition for Writ of Error and Order Allowing Same.

Now come the plaintiffs in the above entitled cause, Dietrich E. Loewe and Martin Fuchs, by their attorneys herein, Messrs. Davenport & Banks, and say that on or about the 7th day of December, 1906, an order was made and entered herein sustaining the demurrer of the defendants and dismissing the complaint on file herein to which order the plaintiffs duly excepted; and that thereafter, on or about the 24th day of December, 1906, a judgment was made
58 and entered herein in favor of the defendants and against the plaintiffs, ordering said complaint to be dismissed, with costs of suit to be taxed; that in said judgment and the proceedings herein had prior thereto in this cause, certain errors were committed to the prejudice of these plaintiffs, all of which will more in detail appear from the assignment of errors, which are on file with this petition.

Therefore the plaintiffs pray an order of this Court, allowing said plaintiffs to prosecute a writ of error to the Honorable United States Circuit Court of Appeals for the Second Circuit, and that a writ of error may issue in this behalf out of the United States Circuit Court of Appeals for the Second Circuit for the correction of the errors so complained of, and in accordance with the laws of the United States in that behalf made and provided, and that a transcript of the record, proceedings and papers in this case, duly

authenticated, may be sent to the United States Circuit Court of Appeals for the Second Circuit, and that an order be made herein fixing the amount of security which the plaintiffs shall give and furnish upon said writ of error, and upon the giving of such security all further proceedings in this court be suspended and stayed, until the determination of said writ of error in the United States Court of Appeals for the Second Circuit, and your petitioners will ever pray.

DAVENPORT & BANKS,
Attorneys for Plaintiffs.

It is ordered that the writ of error above prayed for be allowed this 31st day of December, 1906.

JAMES P. PLATT,
U. S. Judge.

59 The United States Circuit Court of Appeals for the Second Circuit.

THE UNITED STATES OF AMERICA, *Second Judicial Circuit, ss:*

To Martin Lawlor, John Cords, George W. Morehouse, George H. Gilbert, William P. Bailey, Howard S. Gilbert, Charles Green, Charles Lathrop and John McDole, all of the Town of Bethel, Connecticut; Charles J. Barrett, Martin Gorman, Peter Gallagher, Daniel P. Kelley, Simon Blake, Hugh C. Shalvoy, Michael C. Griffin, Patrick Connolly, Albert Hoyt and John Morris, all of the Town of Danbury, Connecticut; Robert Pearson, John E. Paul, Charles Flynn, John W. Sculley, Stephen Carlin, Charles Moore, James Whitney, William A. Brennan and Homer Rockwell, all of the Town of Norwalk, Connecticut; Frederick Taylor, Owen Reiley, Charles Smith, Edward Cunningham, George A. Davis, George Gerrish, Peter Ward, Fanton W. Beers, Albert Berg, Addison Hathaway, John McNamara, John Redway, Ernest Talmadge, W. J. Weisheit, Daniel Riordan, John E. Rooney, Thomas Saunders, Max Singerwode, John Spendlove, Peter F. Kearney, Patrick Keating, James Kinnane, Thomas Layhe, S. Wallace Osborn, all of the Town of Norwalk, Connecticut; Barney Murphy, Owen Murray, John Halpin, John Kane, Edward Manion, Edward Culhane, Edward Johnson, Patrick Troy, Patrick Wixted, Henry Gilbert, Starr Bassett, William Ohler, William Ochs, Myron Trowbridge, Frederick Benedict, Orrin Smith, Charles Frost, Ruben Johnson, Virgil Dibble, Charles Bailey, William Stone, E. Romaine Barnum, Byron Morgan,
60 Joseph Burr, Levi Short, Henry C. Judd, T. Archibald Evans, all of the Town of Bethel, Connecticut; Theophilus Abieniste, Andrew Aitkin, Nicholas W. Allen, Thomas H. Allen, Daniel H. Barnes, Nicholas W. Barzin, Jerome W. Bates, Charles Beckett, John Beckett, Jr., Clemens Beschele, Frederick S. Blackburn, John Blake, Herman H. Bohmann, Nelson H. Booth, James N. Boughey, Thomas Boyd, John Bradshaw, Peter J.

Brennan, Alphonse Bresson, Theodore Bright, Orrin L. Bronson, Byron S. Brooks, Thomas D. Brooks, Andrew G. Brown, William F. Burns, Chauncey H. Butler, Stephen F. Butler, William H. Butler, John Byrone, James P. Callahan, John J. Callahan, Achille Canale, Thomas J. Cassidy, William Clancy, Elmer R. Clark, John H. Collins, Lewy W. Comes, Michael W. Corbett, James D. Costello, John H. Craft, Byron W. Crane, James Crotty, John Crotty, Michael Crowe, Patrick Culligan, Peter T. Currie, William Deakin, George F. Denton, George Dickens, James Dillon, Thomas J. Durkin, James Durnin, William S. Dutcher, John Dyer, John Ellegett, Patrick Ellegett, Patrick Elliott, John G. Ely, Carl Erdman, Timothy H. Farrell, Patrick J. Feeley, Patrick Fennell, Patrick J. Fisher, Patrick Fitzgerald, Patrick Flannagan, Emil Floyske, Thomas Foley, Christian Garni, William E. Geartner, John Gilbride, Patrick Gildea, George J. Goebel, Wright Hampson, David J. Hardy, Alexander Harkness, John Harkness, Patrick Hart, John Hassett, Stephen Havran, Michael Hennessy, George M. Herrick, Ernest H. Heuser, Charles A. Hodge, Adolph Holdeichel, Nathan C. Hoy, William Humphries, Patrick F. Hunt, Charles W. Hurd, Michael Hurd, Patrick E. Jeffrey, Daniel Kearns, Martin Keating, Thomas Keenan, Michael F. Kenney, John Keough, Charles J. King, Frank Kornhass,
61 Frank E. Krecbs, Martin Lauf, John M. Lawler, Edward D. Lees, Thomas Leonard, William E. Luke, Michael F. Lynch, George F. Marshall, Jeremiah McCarthy, Patrick J. McCarthy, Patrick T. McCarthy, Martin McCue, Thomas E. McGauley, Martin McGettrick, James F. McGlone, John McGlone, Peter McGlone, Patrick McGrath, Charles F. McHan, Thomas McHugh, Daniel McInerey, Frank Meath, Henry Messer, Henry C. Michael, George J. Miller, John Miller, Jr., Patrick Moffitt, Gustave Mougin, Eugene L. Mulkin, Daniel Murphy, Timothy Murray, John B. Nowlan, William V. Nowlan, George T. Oakley, John O'Boy, Peter O'Boy, Louis E. Orton, Daniel J. Osborne, Alvah S. Pearce, George H. Phillips, Peter Pickin, Arthur L. Pickett, John Pribula, Jacob Prinz, Christian Rheinhold, Frank Rhode, John Rooney, Frank E. Seaman, Louis Schak, Charles Shaffer, Frederick L. Stahl, Nicholas Streibig, George Stuckey, Stephen Stuckey, Michael E. Sullivan, Mark Sullivan, William S. Sullivan, Joseph Tosi, Thomas E. Waters, Frank K. Wildman, Samuel S. Wilson, Michael Connors, John J. Culhane and John Leonard, all of the Town of Danbury, Connecticut, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals, for the Second Circuit, to be holden at the City of New York, in said Circuit, on the 28th day of January, 1907, next, pursuant to a writ of error, filed in the Clerk's office of the Circuit Court of the United States for the District of Connecticut, wherein Dietrich E. Loewe and Martin Fuchs, both of the Town of Danbury, Connecticut, are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plain-

tiffs in error, as in the said writ of error mentioned, should
62 not be corrected, and why speedy justice should not be done to the parties in that behalf.

Dated at Hartford, in the District of Connecticut, this 31st day of December, 1906.

JAMES P. PLATT,
United States District Judge for the District of Connecticut and One of the Judges of the Circuit Court.

Due and lawful service of the above and foregoing citation is hereby acknowledged, and accepted.

New Haven, 31st day of December, 1906.

BRISTOL, STODDARD, BEACH & FISHER,
DE FOREST S. KLEIN,
JOHN H. LIGHT,
HOWARD W. TAYLOR,
Attorneys for Defendants, Defendants in Error.

Clerk's Office, U. S. Courts, District of Connecticut.

I, E. E. Marvin, Clerk of the United States Circuit Court for the District of Connecticut, do certify that the foregoing is a true and correct return of the record, proceedings, judgment and all things concerning the same, recorded and on file in this court in the case of Dietrich E. Loewe *et al. vs.* Martin Lawlor *et al.*, No. 538, Law.

In testimony whereof I have hereto set my hand and the seal of said Court, at Hartford, in said District, this 14th day of January, A. D. 1907.

[SEAL.] E. E. MARVIN, *Clerk.*

63 The United States Circuit Court of Appeals for the Second Circuit.

DIETRICH E. LOEWE and MARTIN FUCHS
vs.
MARTIN LAWLOR, JOHN CORDS, GEORGE W. MOREHOUSE, GEORGE H. Gilbert, William P. Bailey, Howard S. Gilbert, Charles Green, Charles Lathrop, John McDole, Charles J. Barrett, Martin Gorman, Peter Gallagher, Daniel P. Kelly, Simon Blake, Hugh C. Shalvoy, Michael C. Griffen, Patrick Connolly, Albert Hoyt, John Morris, Robert Pearson, John E. Paul, Charles Flynn, John W. Sculley, Stephen Carlin, Charles Moore, James Whitney, William A. Brennan, Homer Rockwell, Frederick Taylor, Owen Reiley, Charles Smith, Edward Cunningham, George A. Davis, George Gerrish, Peter Ward, Fanton W. Beers, Albert Berg, Addison Hathaway, John McNamara, John Redway, Ernest Talmadge, W. J. Weisheit, Daniel Riordan, John E. Rooney, Thomas Saunders, Max Singerwode, John Spendlove, Peter F. Kearney, Patrick Keating, James Kinnane, Thomas Layhe, Wallace Osborn, Barney Murphy, Owen Murray, John Halpin, John Kane, Edward Manion, Edward Culhane, Edward Johnson, Patrick Troy, Patrick

Wixted, Henry Gilbert, Starr Bassett, William Ohler, William Ochs, Myron Trowbridge, Frederick Benedict, Orrin Smith, Charles Frost, Ruben Johnson, Virgil Dibble, Charles Bailey, William Stone, E. Romaine Barnum, Byron Morgan, Joseph Burr, Levi Short, Henry C. Judd, T. Archibald Evans, Theophilus Abieniste, Andrew Aitkin, Nicholas W. Allen, Thomas H.
64 Allen, Daniel H. Barnes, Nicholas W. Barzin, Jerome W. Bates, Charles Beckett, John Beckett, Jr., Clemens Beschele, Frederick S. Blackburn, John Blake, Herman H. Bohmann, Nelson H. Booth, James N. Boughey, Thomas Boyd, John Bradshaw, Peter J. Brennan, Alphonse Bresson, Theodore Bright, Orrin L. Bronson, Byron S. Brooks, Thomas D. Brooks, Andrew G. Brown, William F. Burns, Chauncey H. Butler, Stephen F. Butler, William H. Butler, John Byrone, James P. Callaghan, John J. Callahan, Achille Canale, Thomas J. Cassidy, William Clancy, Elmer R. Clark, John H. Collins, Lewy W. Comes, Michael W. Corbett, James D. Costello, John H. Craft, Byron W. Crane, James Crotty, John Crotty, Michael Crowe, Patrick Culligan, Peter T. Currie, William Deakin, George F. Denton, George Dickens, James Dillon, Thomas J. Durkin, James Durnin, William S. Dutcher, John Dyer, John Ellegett, Patrick Ellegett, Patrick Elliott, John G. Ely, Carl Erdman, Timothy H. Farrell, Patrick J. Feeley, Patrick Fennell, Patrick J. Fisher, Patrick Fitzgerald, Patrick Flannagan, Emil Floyske, Thomas Foley, Christian Garn, William E. Geartner, John Gilbride, Patrick Gildea, George J. Goebel, Wright Hampson, David J. Hardy, Alexander Harkness, John Harkness, Patrick Hart, John Hassett, Stephen Havran, Michael Hennessy, George M. Herrick, Ernest Heuser, Charles A. Hodge, Adolph Holdeichel, Nathan C. Hoy, William Humphries, Patrick F. Hunt, Charles W. Hurd, Michael Hurd, Patrick E. Jeffrey, Daniel Kearns, Martin Keating, Thomas Keenan, Michael F. Kenney, John Keough, Charles J. King, Frank Korn-
65 hass, Frank E. Krebs, Martin Lauf, John M. Lawler, Edward D. Lees, Thomas Leonard, William E. Luke, Michael F. Lynch, George F. Marshall, Jeremiah McCarthy, Patrick J. McCarthy, Patrick T. McCarthy, Martin McCue, Thomas E. McGauley, Martin McGettrick, James F. McGlone, John McGlone, Peter McGlone, Patrick McGrath, Charles F. McHan, Thomas McHugh, Daniel McInerey, Frank Meath, Henry Messer, Henry C. Michael, George J. Miller, John Miller, Jr., Patrick Moffitt, Gustave Mougin, Eugene L. Mulkin, Daniel Murphy, Timothy Murray, John B. Nowlan, William V. Nowlan, George T. Oakley, John O'Boy, Peter O'Boy, Louis E. Orton, Daniel J. Osborne, Alvah S. Pearce, George H. Phillips, Peter Picken, Arthur L. Pickett, John Pribula, Jacob Prinz, Christian Rheinhold, Frank Rhode, John Rooney, Frank Seaman, Louis Schak, Charles Shaffer, Frederick L. Stahl, Nicholas Streibig, George Stuckey, Stephen Stuckey, Michael E. Sullivan, Mark Sullivan, William S. Sullivan, Joseph Tosi, Thomas E. Waters, Frank K. Wildman, Samuel S. Wilson, Michael Connors, John J. Culhane, and John Leonard.

Stipulation.

The plaintiffs in error and the defendants in error in the above entitled cause hereby stipulate that the following portions of the record only shall be printed, viz.:

The complaint, the demurrer to the complaint, the judgment file, the petition for the writ of error, the assignment of errors,
66 the bond, the writ of error, the citation, and the Judge's memorandum of decision.

Dated at New Haven, Connecticut, this 12th day of January, 1907.

DAVENPORT & BANKS,
Att'ys for Plaintiffs in Error.
BRISTOL, STODDARD, BEACH & FISHER,
DE FOREST & KLEIN,
JOHN H. LIGHT,
HOWARD W. TAYLOR,
Att'ys for Defendants in Error.

So ordered:
WM. J. WALLACE, *U. S. C. J.*

(Endorsed:) The United States Circuit Court of Appeals for the Second Circuit.—D. E. Loewe and Martin Fuchs *vs.* Martin Lawlor *et al.*—Stipulation.—Davenport & Banks, Attorneys and Counsellors at Law, 167 State Street, Bridgeport, Connecticut.—United States Circuit Court of Appeals, Second Circuit.—Filed Jan. 15, 1907.—William Parkin, Clerk.

67 United States Circuit Court of Appeals for the Second Circuit.

No. 277, October Term, 1906.

Argued May 2, 1907. Question Certified July 5, 1907.

D. E. LOEWE ET AL., Plaintiff in Error,
vs.
MARTIN LAWLOR ET AL., Defendants in Error.

In Error to the Circuit Court of the United States for the District of Connecticut.

Before Judges Lacombe, Townsend, and Coxe.

This cause was brought here by writ of error to the Circuit Court for the District of Connecticut, sued out by the plaintiff's in error who were the plaintiffs below.

A demurrer was interposed to the declaration which was sustained by the Circuit Court. Before finally disposing of the cause, this Court desires the instruction of the Supreme Court upon the question arising on the writ of error, and therefore elects to certify that question to the Supreme Court.

Statement of Facts.

The plaintiff's, residents of Connecticut, have for many years been engaged in the manufacture of hats at Danbury in that state;
68 and each year have sold and shipped large numbers of said hats to purchasers in other states. The defendants, over two hundred in number, are all residents of Connecticut, and are all members of an association of persons, styling themselves The United Hatters of America. In or about the month of March, 1901, and at divers other times subsequent thereto the defendants engaged in a combination or conspiracy to prevent or reduce the purchases by persons in other states of hats manufactured by the plaintiff. In pursuance thereof, defendants caused notifications oral, written and printed to be made to customers of plaintiffs in states other than Connecticut, and caused advertisements to be made in newspapers, by such notifications and advertisements informing said customers that unless they should refrain and desist from buying the plaintiffs' hats they would be placed upon the "unfair list" of the American Federation of Labor and that, while they continued to purchase such hats, the patronage of "Union men" would be withdrawn from them and all friends of organized labor would refuse to buy any goods of whatever kind which might be dealt in by such customers.

In consequence of the threats thus made very many of the customers of plaintiffs in states other than Connecticut ceased buying the plaintiffs hats, which they would otherwise have bought from them, and as the necessary result thereof, the sales of large quantities of hats made by plaintiffs to customers in states other than Connecticut ceased, and shipment of such hats from Connecticut to other states was to that extent restrained.

By reason of the transactions above set forth the plaintiffs have been injured in their business to the amount of $80,000.

Question Certified.

Upon this state of facts can plaintiffs maintain an action against defendants under Section 7 of the Anti-Trust Act of July 2, 1890?

In accordance with the provisions of Section 6 of the Act of March 31st, 1891, establishing Courts of Appeal, etc., the foregoing
69 question of law is by the Circuit Court of Appeals for the Second Circuit hereby certified to the Supreme Court of the United States.

July 3, 1907.

E. HENRY LACOMBE,
Circuit Judge.

ALFRED C. COXE,
Circuit Judge.

Judge Townsend heard argument, participated in consultations and voted to certify the above question, but did not see this form of certificate.

(Clerk's certificate in usual form.)

D. Davenport and J. M. Beck, for the Plaintiff in Error.

John K. Beach and Robert E. De Forest, for the Defendant in Error.

70 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing pages, numbered from 1 to 69 inclusive, contain a true and complete transcript of the record and proceedings had in said Court in the case of D. E. Loewe and Martin Fuchs against Martin Lawlor *et al.* as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 19th day of September in the year of our Lord One Thousand Nine Hundred and Seven and of the Independence of the said United States the One Hundred and Thirty-second.

[Seal United States Circuit Court of Appeals
Second Circuit.]

WM. PARKIN, *Clerk.*

71 Supreme Court of the United States.

No. 389, October Term, 1907.

DIETRICH LOEWE ET AL.
vs.
MARTIN LAWLOR ET AL.

On consideration of the motion for a writ of certiorari to bring up the entire record and cause,

It is now here ordered by the Court that said motion be and the same is hereby granted, the transcript of record presented with the motion to stand as a return to the writ.

October 21, 1907.

72 [Endorsed:] File No. 20,792. Supreme Court of the United States. October Term, 1907. Term No. 389. Order granting writ of certiorari, &c. Filed Oct. 21st, 1907.

73 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit, Greeting:

Being informed that there is now pending before you a suit in which D. E. Loewe and Martin Fuchs are plaintiffs in error and Martin Lawlor *et al.*, are defendants in error, which suit was removed into the said Circuit Court of Appeals by virtue of a writ of error to the Circuit Court of the United States for the District of

Connecticut, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States,

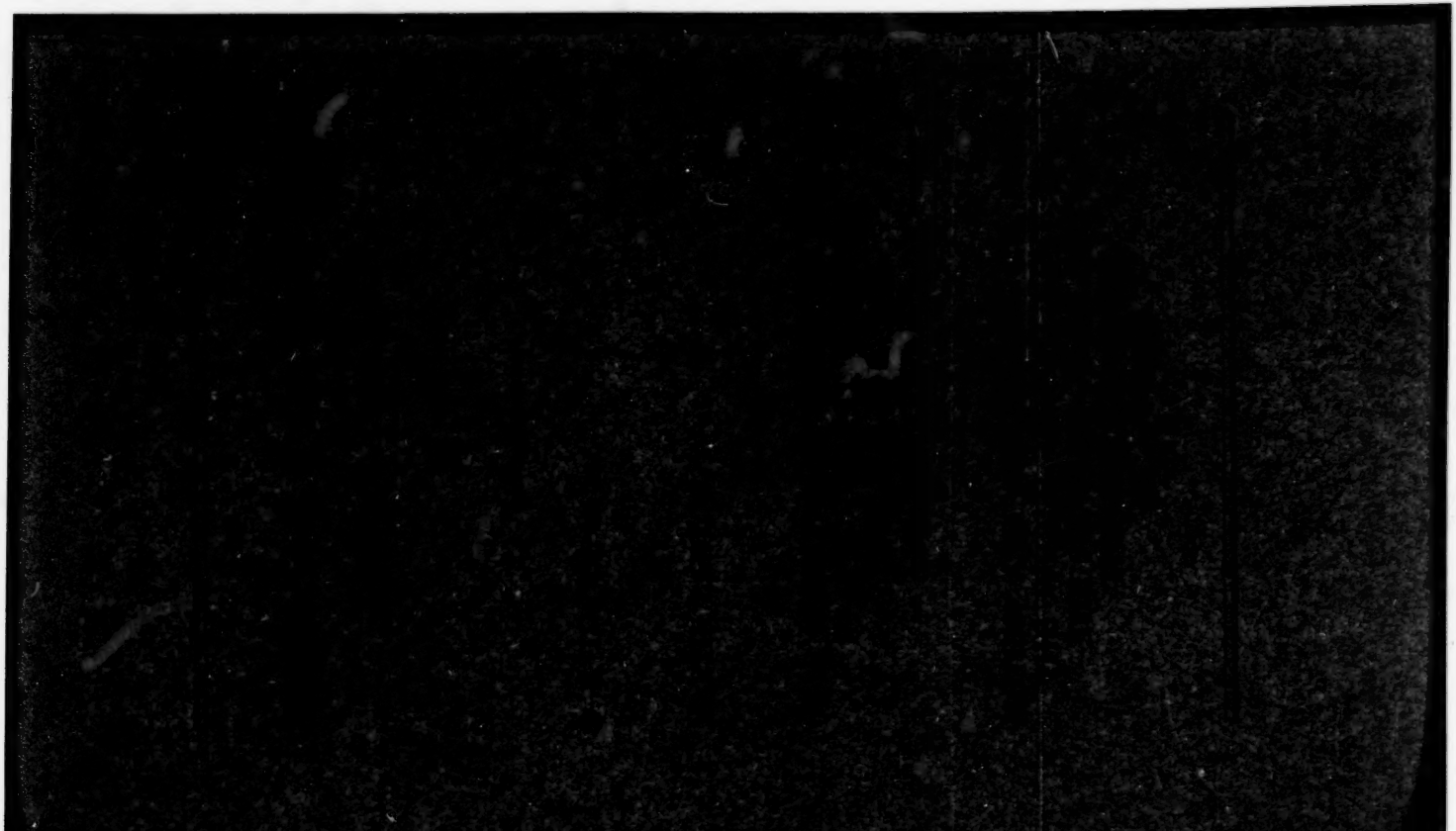
74 Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 21st day of October, in the year of our Lord one thousand nine hundred and seven.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

75 [Endorsed:] File No. 20,792. Supreme Court of the United States. No. 389, October Term, 1907. Dietrich Loewe *et al., vs.* Martin Lawlor *et al.* Writ of certiorari.

Endorsed on cover: File No. 20,792. U. S. circuit court of appeals, 2d circuit. Term No. 389. Dietrich Loewe *et al. vs.* Martin Lawlor *et al.* Transcript of record presented with motion for writ of certiorari and ordered by court to stand as to a return to the writ. Filed October 21st, 1907. File No. 20,792.



Supreme Court of the United States.

OCTOBER TERM, 1907.

No. 389.

D. E. LOEWE, ET AL.

vs.

MARTIN LAWLOR, ET AL.

Come now Dietrich E. Loewe and Martin Fuchs, plaintiffs in error in the Circuit Court of Appeals and plaintiffs in the Circuit Court, and move this Court that the whole record and cause in the above entitled cause be sent to this Court for its consideration, and they tender to this Court a duly certified copy of the whole record and cause, which record is duly certified by William Parkin, Clerk of the United States Circuit Court of Appeals, for the Second Circuit. Said record so certified is identified and made a part of this motion and application and marked Exhibits "A" and "B".

Said plaintiffs in error pray that this motion and application be granted for the following reasons.

1. The record in this cause, as shown on page 45 of the printed record certified by the Clerk of the United States Circuit Court of Appeals for the Second Circuit, tendered herewith, contains the following language of the Circuit Court in dismissing the complaint.

> "It is not perceived that the Supreme Court has as yet so broadened the interpretation of the Sherman Act, that it will fit **such an order of facts as this complaint presents.** What it may do, if the matter comes before it, is, in my judgment, very uncertain. If the demurrer, insofar as it attacks the complaint as a whole, shall be overruled, and the defendants put to their answer, a jury trial must follow in orderly sequence, and after a verdict, the end would still be far away. A contested trial might consume weeks of time and the expense, both to the Court and parties, would be enormous. It is deemed wise, **for these**

reasons, to sustain the demurrer and in this situation it is hoped that the Court may be pardoned for not entering into an analysis of the contentions put forth by the opposing parties. Such contentions and the independent thoughts which they arouse were necessarily examined with care, in order that this present conclusion could be reached, and if in making such examination a further and final conclusion was reached, it would serve no useful purpose to make it known at this juncture."

2. The whole record as tendered with this motion and application is not voluminous. The material parts of it are the complaint, (pages 1 to 28), the first six grounds of demurrer, (pages 29 and 30), the opinion of the Circuit Court, (pages 43 to 46), the judgment of the Circuit Court, (pages 49 and 50), the assignment of errors, (pages 51 to 53), and the certificate of the Circuit Court of Appeals, in all not exceeding forty pages.

This cause, if determined by this Court, therefore will require but little more labor in the search and examination of the record, tendered herewith, than is involved in the examination of the certificate of the Circuit Court of Appeals in order to answer the question certified, and the answer, when given, will be far more effective in determining the fundamental legal question. If the record is not so certified, and this Court answers the abstract question stated by the Court of Appeals, either party may hereafter by a second appeal, contend that the question certified did not correctly state the facts in the complaint.

3. The statement of the facts set out in the certificate is so much condensed and in some respects ambiguous that it requires numerous references to the complaint to be correctly understood in its bearing upon this case; a consideration of the entire record will enable this Court to determine effectively the question certified to it by the Circuit Court of Appeals, and will probably make any further appeal to this Court unnecessary.

4. The question submitted by the certificate of the Circuit Court of Appeals is.

> "Upon this state of facts can plaintiffs maintain an action against the defendant under section 7 of the Anti-Trust Act of July 2, 1890?"

This question is practically the same as that raised by the first ground of the defendants' demurrer to the plaintiffs' complaint to be found on page 29 of the record tendered herewith. Since that question practically raises the question of the jurisdiction of the Circuit Court over the whole case, as well as the existence of a cause of action under Section 7 of the Sherman Anti-Trust Act, **it cannot be properly answered with justice to the parties, unless the Court has the whole complaint before it** and examines it in the light of the specific objections raised by the first six grounds of the demurrer, all of which were sustained for the reasons above quoted, and were made the basis of the judgment of the Circuit Court in dismissing the complaint.

5. The questions involved in this cause as they are presented in the record tendered herewith, by the assignment of errors, are the following:

Did the Circuit Court err in sustaining each and all of the first six grounds of demurrer to the complaint set out on pages 29 and 30 of the printed record tendered herewith as follows:

1. "Because it does not appear therefrom that the plaintiffs and defendants are citizens of different states, and because it does not appear therefrom that the plaintiffs have been injured in their business or property by the defendants or their alleged associates or confederates by reason of anything forbidden or declared to be unlawful by the Act of Congress of July 2, 1890, entitled 'An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies.'

2. Because it does not appear from the complaint that any of the defendants or their alleged associates or confederates were or are engaged in interstate commerce; and does appear therefrom that the combination and conspiracy by reason of which the plaintiffs were injured in their property and business as alleged was a combination and conspiracy directed against the business of the plaintiffs only.

3. Because it does not appear from the complaint that the combination and conspiracy by reason of which the plaintiffs were injured in their business and property as alleged was in direct and immediate restraint of interstate commerce; and does appear therefrom that the direct and immediate purpose of said combination and conspiracy was particularly to bring the plaintiffs' factory under union conditions.

4. Because it does not appear from the complaint that the alleged injury was by reason of a combination or conspiracy in restraint of inter-

state commerce; but does appear that the restraint of interstate commerce, if any, was merely incidental to an alleged conspiracy to injure the plaintiffs' business.

5. Because it is not alleged in said complaint that the defendants or any of them entered into any agreement, combination or conspiracy to restrain the carriage or transportation of the plaintiffs' hats among the several states, or to restrain the plaintiffs from soliciting or making contracts for the sale and delivery of hats to customers in states other than Connecticut.

6. Because the agreement, combination and conspiracy, by reason of which the plaintiffs' business was injured as alleged relates solely to the plaintiffs' hats before they have become, or after they have ceased to be, subjects of interstate commerce, and in dismissing the complaint therefor."

These questions are claimed by the **defendants** to be involved in and bound up with the question certified to this Court by the Circuit Court of Appeals. Therefore they should all be examined, considered and decided by this Court in connection with that question. This case has now been pending in the Circuit Court for **four years without the parties** being able to obtain any judicial determination (practically) as to the merits of these fundamental questions raised by the demurrer, and they should now be authoritatively and finally determined by this Court and the case remanded to the Circuit Court to be proceeded with in accordance with the determination of this Court. Justice to the parties requires it. The prompt and orderly progress of the litigation requires it. The questions presented are also of such grave public importance as to merit and require an early decision by this Court.

not upon a partial statement of the controlling legal question but upon the whole question as set forth in the record.

6. The question certified to this Court by the Circuit Court of Appeals should be considered and decided by this Court upon the facts set out in the certificate viewed in connection with and in the light of the several allegations of the complaint relative thereto which the certificate inadequately summarizes and particularly the following:

(1) "At said Danbury, the plaintiffs have a factory **for the making of hats for sale by them in the various states of the Union,** and have for many years employed at said factory a large number of men **in the manufacture and sale of said hats,** and have invested in that branch of their business a large amount of capital, and **in their business of selling the product of their factory and filling orders for said hats,** have built up and **established a large interstate trade,** employing more than two hundred and thirty persons, in making and annually selling hats of a value exceeding $400,000 (Record page 8.)

(2) "The plaintiffs * * * * are engaged in trade and commerce among the several states of the Union, **in selling and shipping almost the whole** of the product of their said factory **by common carriers, from said Danbury to wholesale dealers residing and doing business in each** of the states of Maine, Massachusetts, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Virginia, Ohio, Illinois, Michigan, Wisconsin, Missouri, Nebraska, Arkansas, California and other states, to the amount of many of hundreds of thousands of dollars, **and in sending agents with sam-**

ples from said Danbury into and through each of said states to visit said wholesale dealers at their places of business in said several states, and solicit and procure from them orders for said hats, to be filled by hats to be shipped from their said factory at said Danbury, by common carriers to said wholesale dealers, to be by them paid for after the delivery thereof at their several place of business." (Record page 9.)

(3) "The defendants * * * * are all members of a combination or association of persons, styling themselves the United Hatters of North America, and said combination includes more than nine thousand persons, residing in the several states of Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Indiana, Illinois, Missouri, California, and in the Province of Ontario in the Dominion of Canada. Said combination is subdivided into twenty subcombinations, each of which is by themselves styled a local union of the United Hatters of North America." (Record page 10).

(4) "The defendants are also all members of a combination or association of persons calling themselves and known as The American Federation of Labor, which includes more than a million and four hundred thousand members residing in the several states and territories of the Union, and in the Dominion of Canada, and in all the places in the several States, where the wholesale dealers in hats, hereinbefore mentioned and their customers, reside and do business. Said combination is subdivided into * * * one hundred and ten national and international unions or combinations, of which the said combination of persons * * * * the United Hatters of North America is one, composed of twelve thousand local unions, twenty-eight State federations or combina-

tions, more than five hundred Central labor unions or combinations, and more than two thousand local unions or combinations, which are not included in the above mentioned National and International combinations." (Record page 11 and 12.)

(5) "The persons united in said combination known as The American Federation of Labor * * * * constantly employ more than **one thousand agents** in the states and territories of the United States, to **push enforce and carry into effect all boycotts** declared by the said members, **including those in aid of the combined scheme, purpose and effort hereinafter stated, to force** all the manufacturers of fur hats in the United States, including the plaintiffs, **to unionize** their factories **by restraining and destroying their interstate trade and commerce, as hereinafter stated,** all of which said agents act under the immediate supervision and personal direction of one Samuel Gompers, who is chief agent of the said combination of persons for said purpose, and of each of the said subcombinations. (Record pages 12 and 13.)

(6) "Said American Federation of Labor * * * * was by the defendants and their other members formed for the purpose, among others, of **facilitating the declaration and successful maintenance of boycotts, by and for said combination of persons known as the United Hatters of North America,** acting through the said Federation of Labor and its other component parts or members, and it and its component parts have frequently declared boycotts, at the request of the defendants against the business and product of various hat manufacturers, and have vigorously prosecuted the same by and through the powerful machinery at their command as aforesaid, in carrying out their general scheme herein stated, to the great damage and loss of

business of said manufacturers, * * * * all of which was well known to the plaintiffs, their customers, wholesale dealers and the public, and was, by the defendants and their agents widely proclaimed through all their agencies above mentioned, in connection with their acts against the plaintiffs as hereinafter set forth, for the purpose of intimidating and coercing said wholesale dealers and their customers from buying the hats of the plaintiffs, by creating in their minds the fear that the defendants would invoke and put into operation against them, all said powerful means, measures and machinery, if they should handle the hats of the plaintiffs." (Record page 14.)

(7) "The defendants * * * have been for many years and now are engaged in a combined scheme and effort to force all manufacturers of fur hats in the United States, including the plaintiffs, against their will, and their previous policy of carrying on their business, to organize their workmen in the departments of making and finishing, in each of their factories, into an organization, to be part and parcel of the said combination known as the United Hatters of North America, or as the defendants and their confederates term it, to unionize their shops, with the intent thereby to control the employment of labor in and the operation of said factory, and to subject the same to the direction and control of persons, other than the owners of the same, in a manner extremely onerous and distasteful to such owner, and to carry out such scheme, effort and purpose by restraining and destroying the interstate trade and commerce of such manufacturers, by means of intimidation of and threats made to such manufacturers and their customers in the several states, of boycotting them, their product and their customers, using therefor all the

powerful means at their command as aforesaid, until such time as from the damage and loss of business resulting therefrom, the said manufacturers should yield to the said demand to unionize their factories." (Record pages 14 and 15.)

(8) "The defendants * * * in pursuance of said general combined scheme and purpose, and in carrying the same into effect against said manufacturers, including the plaintiffs, and by use of the means above stated, and the fear thereof have within a very few years forced the following named manufacturers of hats in the United States to yield to their demand, and unionize their factories viz." Seventy concerns * * * "and until there remained, according to the statements of the defendants, only twelve hat factories in the United States which have not submitted to their said demands, and the defendants in pursuing their warfare against the plaintiffs as hereinafter set forth, and in connection with their said acts against them, have made public announcement of that fact and of the firms so coerced by them, in order thereby to increase the effectiveness of their acts in intimidating said wholesale dealers and their customers in states other than Connecticut from buying hats from the plaintiffs." (Record pages 15, 16 and 17.)

(9) On or about March 1, 1901, in pursuance of said general scheme and purpose, the defendants * * * demanded of the plaintiffs that they should unionize their said factory, in the making and finishing departments, and also thereby acquire the right to use and use, the said union label, subject to the right of the defendants to recall the same at pleasure, in all hats made by them, and then notified the plaintiffs that if they failed to yield to said demands, the defendants and all the other members of the said combination known as

the United Hatters of North America, would resort to their said usual and well known methods to compel them so to do. * * * * The defendants, their confederates and agents deferred the execution of their said threat against the plaintiffs until the conclusion of their attack made in pursuance of the same general scheme and purpose against H. H. Roelofs & Co., which resulted in the surrender of Roelofs & Co., on July 15th, 1902, except that the defendants, their confederates and agents, in November, 1901, caused the said American Federation of Labor to declare a boycott against any dealer or dealers who should handle the product of the plaintiffs." (Record pages 17 and 18.)

(10) "On or about July 25th, 1902, the defendants * * * * * in pursuance of the general scheme and purpose aforesaid, to force all manufacturers of fur hats, and particularly the plaintiffs, to so unionize their factories * * * and with intent to injure the property and businessof the plaintiffs by means of acts done which are forbidden and declared to be unlawful by said Act of Congress, entered into a combination and conspiacy to restrain the plaintiffs and their customers in states other than Connecticut, in carrying on said trade and commerce among the several states and to wholly prevent them from engaging in and carrying on said trade and commerce between them and to prevent the plaintiffs from selling their hats to wholesale dealers and purchasers in said states other than Connecticut, and to prevent said dealers and customers in said other states from buying the same, and to prevent the plaintiffs from obtaining orders for their hats from such customers, and filling the same, and shipping said hats to said customers in said states as aforesaid, and thereby injure the plaintiffs in their property and

business and to render unsalable the product and output of their said factory, so the subject of interstate commerce, in whosoever's hands the same might be or come, through said interstate trade and commerce, and to employ as means to carry out said combination and conspiracy and the purposes thereof, and accomplish the same, the following measures and acts viz.: . . . . . .

To cause, by means of threats and coercion the concerted and simultaneous withdrawal of all the makers and finishers of hats then working for them * * * and thereby cripple the operation of the plaintiffs' factory, and prevent the plaintiffs from filling a large number of orders then on hand, from such wholesale dealers in states other than Connecticut, which they had engaged to fill and were then in the act of filling, as was well known to the defendants; in connection therewith to declare a boycott against all hats made for sale and sold and delivered or to be so sold or delivered by the plaintiffs to said wholesale dealers in states other than Connecticut, and to actively boycott the same and the business of those who should deal in them, and thereby prevent the sale of the same by those in whose hands they might be or come through said interstate trade in said several states; to procure and cause others of said combinations united with them in said American Federation of Labor, in like manner to declare a boycott against and to actively boycott the same and the business of such wholesale dealers as should buy or sell them, and of those who should purchase them from such wholesale dealers; to intimidate such wholesale dealers from purchasing or dealing in the hats of the plaintiffs by informing them that the American Federation of Labor had declared a boycott against the product of the plaintiffs and against any dealer who handle it, and that the same was to be actively pressed

against them, and by distributing circulars containing notices that such dealers and their customers were to be boycotted; to threaten with a boycott those customers who should buy any goods whatever, even though union made, of such boycotted dealers, and at the same time to notify such wholesale dealers that they were at liberty to deal in the hats of any other non-union manufacturer of similar quality to those made by the plaintiffs, but must not deal in the hats made by the plaintiffs under threats of such boycotting; to falsely represent to said wholesale dealers and their customers, that the plaintiffs had discriminated against the union men in their employ, had thrown them out of employment because they refused to give up their union cards and teach boys, who were intended to take their places after seven months' instruction, and had driven their employes to extreme measures "by their persistent, unfair and unAmerican policy of antagonizing union labor, forcing wages to a starvation scale, and giving boys and cheap unskilled foreign labor preference over experienced and capable union workmen', in order to intimidate said dealers from purchasing said hats by reason of the prejudice thereby created against the plaintiffs and the hats made by them, among those who might otherwise purchase them; to use the said union label of said United Hatters of North America as an instrument to aid them incarrying out said conspiracy and combination against the plaintiffs' and their customers' interstate trade aforesaid, and in connection with the boycotting above mentioned, for the purpose of describing and identifying the hats of the plaintiffs, and singling them out to be so boycotted; to employ a large number of agents to visit said wholesale dealers and their customers, at their several places of business, and threaten them with loss of business if they should buy or handle

the hats of the plaintiffs and thereby prevent them from buying said hats and **in connection therewith** to cause said dealers **to be waited upon** by **committees representing large combinations of persons in their several localities to make similar threats to them**; to **use the daily press** in the localities **where such wholesale dealers reside, and do business,** to announce and **advertise the said boycotts** against the **hats of the plaintiffs and said wholesale dealers,** and thereby make the same more effective and oppressive, and to **use the columns of their said paper,** The Journal of the United Hatters of North America, **for that purpose,** and to describe the acts of their said agents in prosecuting the same." (Record pages 18, 19, 20 and 21.)

(11) The acts done by the defendants in pursuance of said combination and conspiracy and to carry the same into effect are stated in detail in paragraph 21 on pages 21, 22, 23, 24, 25, and 26 of the Record. They are of the same nature as those planned to be used in carrying out the said conspiracy as above described.

(12) "By means of each and all of said acts done by the defendants in pursuance of said combination and conspiracy, they have greatly restrained, diminished, and in many places destroyed the trade and commerce of the plaintiffs with said wholesale dealers, in said states other than Connecticut, by the loss of many orders and customers directly resulting therefrom, and the plaintiffs have been injured in their business and property by reason of said combination and conspiracy, and the acts of the defendants done in pursuance thereof, and to carry the same into effect, which are declared to be unlawful by said Act of Congress, to

the amount of $80,000, to recover threefold which damages, under Section 7 of said Act, this suit is brought."

October 1st, 1907.

JAMES M. BECK,

DANIEL DAVENPORT,

Attorneys for the Plaintiffs in Error.

To John K. Beach and Robert E. DeForest,
Attorneys for Defendants in Error.

Dear Sirs:

On the 14th day of October, 1907, or as soon thereafter as counsel can in that behalf be heard, we shall move the Court that the foregoing application and rule be granted.

Yours truly,

JAMES M. BECK,

DANIEL DAVENPORT,

Attorneys for the Plaintiffs in Error.

For and in behalf of the Defendants in Error, Martin Lawlor, et al., we hereby join and unite in the request that the application and rule moved for as above be granted.

John K. Beach,
Att'y. for
Def'ts. in Error.

Office Supreme Court, U. S.
FILED.
OCT 11 1907
JAMES H. McKENNEY,
CLERK.

The Supreme Court of the United States.

OCTOBER TERM, 1907.

No. 389.

D. E. LOEWE, ET AL.
Plaintiffs in Error,

vs.

MARTIN LAWLOR, ET AL.
Defendants in Error.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

MOTION TO HAVE THE CAUSE ADVANCED ON THE DOCKET AND SET DOWN FOR A DAY CERTAIN.

In the Supreme Court of the United States

D. E. LOEWE & ANOTHER
vs.
MARTIN LAWLOR, ET AL.

October Term, 1907
No. 389.

Now come D. E. Loewe and Martin Fuchs, plaintiffs in error in the Circuit Court of Appeals for the Second Circuit, and plaintiffs in the Circuit Court in this cause, and move the Court that this cause be advanced on the docket and set down for a day certain, upon the ground of the following special and peculiar circumstances.

1. This action is brought to recover treble damages under Section 7 of the Sherman Anti-Trust Act of July 2nd, 1890. It was brought to the United States Circuit Court for the District of Connecticut **on the second Tuesday of October, 1903.** The defendants demurred to the complaint on the ground that it did not set forth a cause of action under that section of the Anti-Trust Act.

The Circuit Court dismissed the complaint for the following reasons.

> "It is not perceived that the Supreme Court has as yet so broadened the interpretation of the

Sherman Act, that it will fit such an order of facts as this complaint presents. What it may do, if the matter comes before it, is, in my judgment, very uncertain.

If the demurrer, in so far as it attacks the complaint as a whole, shall be overruled and the defendants put to their answer, a jury trial must follow in orderly sequence, and after a verdict, the end would still be far away. A contested trial might consume weeks of time and the expense, both to the Court and parties, would be enormous. It is deemed wise, for these reasons, to sustain the demurrer, and in this situation it is hoped that the Court may be pardoned for not entering into an analysis of the contentions put forth by the opposing parties. Such contentions and the independent thoughts which they aroused were necessarily examined with care, in order that this present conclusion could be reached, and if in making such examination, a further and final conclusion was reached, it would serve no useful purpose to make it known at this juncture.

If the matter shall come back to me, for further action, observations upon the questions advanced by the special grounds of demurrer would be gratefully read, and might tend to avoid unreasonable delay and expense at a later stage of the proceedings. Let the complaint be dismissed."

Thereupon, the Court entered judgment sustaining the first six grounds of said demurrer as contained in the first six paragraphs thereof, and ordering that the complaint be dismissed.

The plaintiffs at once sued out a writ of error from the United States Circuit Court of Appeals for the Second Circuit and assigned for errors the action of the Court in sustaining the first six grounds of the demurrer interposed by the defendants to the complaint and in rendering judgment against the plaintiffs dismissing the complaint.

The case came on for argument before the Circuit Court of Appeals and was elaborately argued by the attorneys for the plaintiffs and defendants. Thereupon, the Circuit Court of Appeals certified to this Court as the controlling question in the case the following:

> "Upon this state of facts, can plaintiffs maintain an action against the defendants under Section 7 of the Anti-Trust Act of July 2nd, 1890?"

The foregoing action of the Circuit Court and of the Circuit Court of Appeals, in thus seeking to obtain, in advance of a trial of the facts, a decision by this Court of this fundamental question in the case, was taken in the interest of the public and of the parties, without any motion or suggestion therefor by either the plaintiffs' or defendants' counsel. It shows that in the opinion of both Courts, the matter is of importance and should be settled by this Court before further proceedings are had in the case in either Court below.

In view of these facts, justice to the parties and the prompt and orderly progress of this litigation in the lower Court require that the matter should receive the attention of this Court at as early a date as possible, consistent with its practice and convenience and its views of the public interest.

2. Several other cases are pending in the lower Courts of the United States which involve this question, and it is therefore important that it should be decided at as early a date as possible.

3. Furthermore, the questions involved in this case which require the decision of this Court are of grave public importance.

The plaintiffs like most other manufacturers are engaged in trade and commerce among the several states of the Union in selling and shipping almost the whole of the product of their factory, located at Danbury, Connecticut, by common carriers, to wholesale dealers residing and doing business in states other than the place of manufacture, to the amount of many hundreds of thousands of dollars.

The defendants are all members of a labor union styling themselves the United Hatters of North America, with a membership of more than nine thousand persons residing in various states of the Union. They are also members of a larger combination known as the American Federation of Labor which includes more than a million four hundred thousand members residing in the various states and territories of the Union. This latter combination is subdivided into one hundred and ten National unions of which said United Hatters of North America is one, composed of twelve thousand local unions, twenty-eight State Federations or combinations, more than five hundred Central Labor unions, and more than two thousand other local unions which are not included in said National unions.

Said United Hatters of North America and said American Federation of Labor issue two papers, one styled the Journal of the United Hatters of North America, and the other styled the American Federationist, which have a very wide circulation among their members and the public, and which they use for the dissemination of information to such members

and the public as to boycotts declared and pushed by them and of the acts and measures of their members and agents in carrying such boycotts into effect and were so used by them in connection with their other acts against the defendants as described in the complaint.

The American Federation of Labor was formed by the defendants and its other members for the purpose, among others, of facilitating the declaration and successful maintenance of boycotts in behalf of said United Hatters of North America in carrying out the following program.

The defendants, together with the other persons united with them in said combination known as the United Hatters of North America, have been for many years, and now are engaged in a combined scheme and effort to force all manufacturers of fur hats in the United States, including the plaintiffs, against their will and previous policy of carrying on their business, to organize their workmen in the departments of making and finishing, in each of their factories, into an organization to be part and parcel of the said combination known as the United Hatters of North America, or as the defendants and their confederates term it, to "unionize their" shops, with the intent thereby to control the employment of labor in and the operations of said factories, and to subject the same to the direction and control of persons, other than the owners of the same, in a manner extremely onerous and distasteful to such owners, and to carry out such scheme, effort and purpose, by restraining and destroying the interstate trade and commerce of such manufacturers, by means of intimidation of and threats made to such manufacturers and their customers in the several states, of boycotting them, their product

and their customers, using therefor all the powerful means at their command as described in the complaint, until such time as from the damage and loss of business resulting therefrom, the said manufacturers should yield to the said demands to unionize their factories.

The defendants and the other members of the United Hatters of North America acting with them and in pursuance of said general combined scheme and purpose, and in carrying the same into effect against said manufacturers, including the plaintiffs, and by use of the means above stated and the fear thereof, have within a very few years, forced seventy manufacturrs of fur hats in the United States to yield to their demands and "unionize their factories", until there remain, according to the statements of the defendants, only twelve hat factories in the United States which have not submitted to their said demands, and the defendants, in pursuing their warfare against the plaintiffs as described in the complaint, and in connection with their acts against them, have made public announcement of that fact and of the firms so coerced by them, in order thereby to increase the effectiveness of their acts in states other than Connecticut, from buying hats from the plaintiffs as described in the complaint.

The defendants, in pursuance of said scheme, caused said American Federation of Labor to declare a boycott against any dealer or dealers who should handle the product of the plaintiffs and created a reign of terror among the wholesale dealers and purchasers in states other than Connecticut in order to prevent the plaintiffs from selling their hats to such wholesale dealers and purchasers in other states, and to prevent such dealers and customers from buying the

same, and to prevent the plaintiffs from obtaining orders for their hats from such customers and filling the same and shipping said hats to said customers and to render unsalable the product and output of their factory, so the subject of interstate commerce in whosoever's hands the same might be or come through said interstate trade and commerce, and further employed as means to carry out said combination and conspiracy and the purposes thereof a large number of measures of the same general character, all described in the complaint, **with the result that the plaintiffs' interstate business was almost wholly destroyed thereby.**

The defendants by their demurrer raised the question whether the injury sustained by reason of such acts done in pursuance of such a combination and conspiracy against the interstate trade of the plaintiffs could be recovered in an action based on the Seventh Section of the Sherman Anti-Trust Act. It is manifest from the foregoing facts which all appear in the complaint that this question is of great public importance, affecting as it does a very large numbers of manufacturers and of workingmen and that it should be speedily determined by this Court, for upon the principles laid down in this case will depend the future conduct of large numbers of persons and the rights of many more.

The plaintiffs contend that they have been and are being greatly damaged in the exercise of their rights under the Federal Constitution to engage in interstate commerce by an unlawful conspiracy of exceptional magnitude. In the attempt to vindicate their rights, four years have almost passed in litigation

without obtaining any definitive decision. An early and final decision by this Court is reasonably due them.

Although the questions of law involved are important, they are extremely simple, and the argument of them will not require more than the allowance of time prescribed by the rules.

October 1st, 1907.

JAMES M. BECK,

DANIEL DAVENPORT,

Attorneys for the Plaintiffs.

To John K. Beach and Robert E. DeForest,
Attorneys for Defendants.

Dear Sirs:

On the 14th day of October, 1907, or as soon thereafter counsel can in that behalf be heard, we shall move the Court that the foregoing rule be granted.

Yours truly,

JAMES M. BECK,

DANIEL DAVENPORT,

Attorneys for the Plaintiffs in Error.

For and in behalf of the defendants in error, Martin Lawlor et. al., we hereby join and unite in the request that the rule to be moved for as above be granted.

John K. Beach,
Att'y. for
Def'ts. in Error.

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 277—October Term, 1906.

Argued May 2, 1907. Question Certified July 5, 1907.

D. E. LOEWE, ET AL., Plaintiff in Error, vs. MARTIN LAWLOR, ET AL., Defendants in Error.	In Error to the Circuit Court of the United States for the District of Connecticut. Before Judges Lacombe, Townsend and Coxe.

This cause was brought here by writ of error to the Circuit Court for the District of Connecticut, sued out by the plaintiffs in error who were the plaintiffs below.

A demurrer was interposed to the declaration which was sustained by the Circuit Court. Before finally disposing of the cause, this Court desires the instruction of the Supreme Court upon the question arising on the writ of error, and therefore elects to certify that question to the Supreme Court.

STATEMENT OF FACTS.

The plaintiffs, residents of Connecticut, have for many years been engaged in the manufacture of hats at Danbury in that state; and each year have sold and

shipped large numbers of said hats to purchasers in other states. The defendants, over two hundred in number, are all residents of Connecticut, and are all members of an association of persons, styling themselves The United Hatters of America. In or about the month of March, 1901, and at divers other times subsequent thereto the defendants engaged in a combination or conspiracy to prevent or reduce the purchases by persons in other states of hats manufactured by the plaintiff. In pursuance thereof, defendants caused notifications oral, written and printed to be made to customers of plaintiffs in states other than Connecticut, and caused advertisements to be made in newspapers, by such notifications and advertisements informing said customers that unless they should refrain and desist from buying the plaintiffs' hats they would be placed upon the "unfair list" of the American Federation of Labor and that, while they continued to purchase such hats, the patronage of "Union men" would be withdrawn from them and all friends of organized labor would refuse to buy any goods of whatever kind which might be dealt in by such customers.

In consequence of the threats thus made very many of the customers of plaintiffs in states other than Connecticut ceased buying the plaintiffs' hats, which they would otherwise have bought from them, and as the necessary result thereof, the sales of large quantities of hats made by plaintiffs to customers in states other than Connecticut ceased, and shipment of such hats from Connecticut to other states was to that extent restrained.

By reason of the transactions above set forth the plaintiffs have been injured in their business to the amount of $80,000.

QUESTION CERTIFIED.

Upon this state of facts can plaintiffs maintain an action against defendants unde Section 7 of the Anti-Trust Act of July 2, 1890?

In accordance with the provisions of Section 6 of the Act of March 31st, 1891, establishing Courts of Appeal, etc., the foregoing question of law is by the Circuit Court of Appeals for the Second Circuit hereby certified to the Supreme Court of the United States.

July 3, 1907.

E. HENRY LACOMBE,
Circuit Judge.

ALFRED C. COXE,
Circuit Judge.

Judge Townsend heard argument, participated in consultations and voted to certify the above question, but did not see this form of certificate.
(Clerk's certificate in usual form.)

D. DAVENPORT and J. M. BECK,
For the Plaintiff in Error.

JOHN K. BEACH and ROBERT E. DEFOREST,
For the Defendant in Error.

FILED.
NOV 29 1907
JAMES H. McKENNEY,

IN THE SUPREME COURT.

OCTOBER TERM, 1907.

No. 389.

DIETRICH E. LOEWE
AND
MARTIN FUCHS,
Plaintiffs in Error,
vs. (*Plaintiffs below*),

MARTIN LAWLOR ET AL.,
Defendants in Error,
(*Defendants below*).

BRIEF FOR PLAINTIFFS IN ERROR.

JAMES M. BECK,
DANIEL DAVENPORT,
Counsel for Plaintiffs in Error.

C. G. Burgoyne, Walker and Centre Street, N. Y.

Supreme Court of the United States.

DIETRICH E. LOEWE and another

AGAINST

MARTIN LAWLOR, ET AL.

October Term, 1907, No. 389.

BRIEF FOR PLAINTIFFS IN ERROR.

This case comes before this Court, under Section 6 of the Act of March 3, 1891, which provides that in any case in which

> " the Circuit Court of Appeals at any time may certify to the Supreme Court of the United States any questions or propositions of law, concerning which it desires the instruction of that Court for its proper decision,"

the Supreme Court may

> " require that the whole record and cause may be sent up to it for its consideration, and thereupon shall decide the whole matter in controversy, in the same manner as if it had been brought there for review by writ of error or appeal."

The plaintiffs in error and plaintiffs below brought this action in the Circuit Court for the District of Connecticut and filed a complaint, which was dismissed by the said Circuit Court on demurrer on the following ground:

> "It is not perceived that the Supreme Court has as yet so broadened the interpretation of the Sherman Act that it will fit such an order of facts as this complaint presents. *What it may do, if the matter comes before it, is in my judgment very uncertain.*"

The Circuit Court of Appeals for the Second Circuit, having certified the question to this Court whether, under a statement of facts set forth in its certificate, the plaintiffs could maintain an action against the defendant under Section 7 of the Anti-trust Act of July 2, 1890, the Supreme Court, on the application of the plaintiffs in error, and under the provisions above cited, did "require that the whole record and cause" be sent up to it for its consideration and the matter in controversy is therefore before this Court "as if it had been brought for a review by writ of error or appeal" from the judgment of the Circuit Court, and this Court will therefore determine whether the judgment of the Circuit Court was right in dismissing the complaint upon demurrer.

The provisions of the Sherman Anti-Trust Law, under which the suit is brought, are as follows :

> 1. "**Every** contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. **Every person** who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one one year, or by both said punishments, in the discretion of the Court."
>
> 7. "Any person who shall be injured in his business or property by **any other person or corporation** by reason of anything forbidden or declared to be unlawful by this Act, may sue therefor in any Circuit Court of the United States in the District, in which the defendant resides or is found, without respect to the amount in controversy and shall recover three-fold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee."

The plaintiffs allege in paragraph 22 of the complaint (Rec., p. 17) that by means of each and all of the acts done by the defendants as set out in the complaint, in pursuance of the combination and conspiracy stated in the complaint, they have greatly restrained, diminished, and, in many places, destroyed the trade and commerce of the plaintiffs with said wholesale dealers, in States other than Connecticut, by the loss of many orders and customers directly re-

sulting therefrom, and the plaintiffs have been injured in their business and property by reason of said combination and conspiracy, and the acts of the defendants done in pursuance thereof, and to carry the same into effect, which are declared to be unlawful by said Act of Congress, to the amount of $80,000, to recover threefold damages for which this suit is brought under Section 7 of said Act.

The pivotal question in the case is whether the combination and conspiracy set out in the complaint is in restraint of interstate trade and commerce within the meaning of the statute. The plaintiffs contend that the design, means and **actual effect** of the conspiracy clearly make it one in direct restraint of interstate trade.

The complaint is found on pages 4–18, inclusive, of the Record.

As we deem every allegation of the complaint to be essential to a proper statement of the cause of action relied upon, and to be borne in mind in determining its sufficiency and as it does not seem to us to be susceptible of substantial abridgment, without leaving out something material, we respectfully refer the Court to that portion of the Record as the best and only adequate statement of the facts and we here attempt only a brief general description of the case, with some extracts from the Record to show its correctness.

The complaint shows that the defendants are engaged in an extensive scheme te establish a complete monopoly of the business of supplying labor to the plaintiffs and all other hat manufacturers in the United States of an article of prime necessity to the public, and in common use, by restraining and destroying the interstate trade and commerce of all fur hat manufacturers, including the plaintiffs, who will not yield to their demands, and to restrain and destroy such interstate trade of such manufacturers until they do so yield; that for this express purpose they have constructed a machine obviously adapted to accomplish that result; that this machine has been used, and is to be used against the interstate trade of every hat manufacturer of the country, including the plaintiffs, until they have surrendered to their demands, or shall do so; that the defendants' object is, by the use of that machine in the mode described in the complaint, to make it impossible for the plaintiffs and all others under the blacklist, to obtain customers or dispose of their goods in other States, by the direct intimidation and coercion, through the means alleged, of all who wish to deal with them; that the defendants as a part of, and a step in, the development and prosecution of this plot,

have specially contrived such measures and have used such means, with most disastrous effect, directly against the interstate trade of the plaintiffs; that the principal part of the plaintiffs' business, and so intimately and inseparably connected with it that the rest is wholly dependent upon it, is, selling and shipping the product of their factory in this State to wholesalers in other States in fulfillment of orders obtained by agents, sent to such customers, and that it was a part of the scheme contrived and carried out, in the way described, to destroy the plaintiffs' interstate business by, at one and the same time, cutting off both the obtaining of any such orders, and the means of filling them. The intent, the means employed, and the nature of their operation, make the combination described in the complaint one directly to restrain interstate trade and commerce.

The plaintiffs are engaged in trade and commerce among the several States, in selling and shipping almost the whole of the product of their factory located at Danbury, Connecticut, by common carriers, from said Danbury to wholesale dealers residing and doing business in each of the seventeen principal States of the Union, to the amount of many hundreds of thousands of dollars, and in sending agents with samples from said Danbury into and through each of said States, to visit said wholesale dealers at their places of business in said States, and solicit and procure from them orders to be filled by hats to be shipped from their factory at Danbury by common carriers to said wholesale dealers, to be by them paid for after the delivery thereof at their several places of business (Rec., p. 6; paragraph 5 of the Complaint).

The value of the hats thus annually sold and shipped by them to dealers in States other than Connecticut, exceeded four hundred thousand dollars, while the value of the hats sold by them in Connecticut did not exceed ten thousand dollars. They were almost wholly dependent upon the sale and shipment of hats, as aforesaid, to said dealers in States other than Connecticut to keep their factory running and to dispose of its product and their capital in said business, amounting to one hundred and thirty thousand dollars, profitably employed, and the restraint, curtailment and destruction of their said trade and commerce with their customers in States other than Connecticut by the acts of the defendants complained of, have

been of very serious damage to the property and business of the plaintiff (Rec., pp. 6 and 7 ; paragraphs 6 and 8 of the Complaint).

The plaintiffs for many years have conducted their business upon the principle of not discriminating against any person seeking employment by reason of membership or non-membership in any labor organization and have refused to enter into agreement with any person or organization, whereby their rights and privileges or those of their employees would be surrendered to or controlled by said person or organization, believing such policy to be both right and necessary to the successful conduct of their business and the welfare of their employees (Rec., p. 6 ; paragraph 4 of the Complaint).

The defendants, with some nine thousand others, are combined in an association known as the United Hatters of North America, and with some fourteen hundred thousand others into another association known as the American Federation of Labor, whose members reside in all the places in the several States where the wholesale dealers in hats before mentioned and their customers reside and do business. These associations are subdivided into sub-combinations, numbering in all upwards of fourteen thousand, in the manner described in pages 7 and 8 of the Record (paragraphs 9 and 12 of the Complaint).

The defendants, employing the highly organized and effective machinery which they have provided for that purpose, as set forth in pages 7–9, inclusive, of the Record (paragraphs 10, 11, 13, 14 and 15 of the Complaint) have been for many years and are now engaged in a combined scheme and effort to force all manufacturers of fur hats in the United States, including the plaintiffs, against their will and their previous policy of carrying on their business, to unionize their shops, with the intent thereby to control the employment of labor in and the operation of said factories and to subject the same to the direction and control of persons other than the owners, and **to carry out such scheme, effort and purpose by restraining and destroying the interstate trade and commerce of such manufacturers by means of intimidation of and threats made to such manufacturers and their customers in the several States of boycotting them, their products, and their customers, using therefor all the powerful means at their command as aforesaid, until such time as from the damage and loss of business resulting therefrom the said manufacturers should yield to said demands to**

unionize their factories (Rec., pp. 9, 10; paragraph 16 of the Complaint).

The defendants have so successfully prosecuted such scheme that, by use of the means described in the complaint and the fear thereof, they have, within a very few years forced seventy of the eighty-two fur hat manufacturers in the United States to yield to their demands, and in prosecuting the part of said scheme specially directed against the plaintiffs, they have in connection with the acts done against the plaintiffs, made public announcement of this fact, in order to increase the effectiveness of those acts in intimidating the wholesale dealers of other States than Connecticut and their customers from buying the hats of the plaintiffs (Rec., p. 10, paragraph 17 of the complaint).

In pursuance of this scheme, the defendants about March 1st, 1901, demanded of the plaintiffs that they should so unionize their factory and also acquire the right to use and use the union label subject to the right of the defendants to recall the same at pleasure and notified them that in the event of their failure to do so they would resort to their said usual and well known methods to compel them to do so. The plaintiffs refused. Thereupon the defendants deferred the further execution of their scheme against the plaintiffs until after the successful termination of their operations in carrying out said scheme against the firm of H. H. Roelofs & Co., fur hat manufacturers of Philadelphia, Pa., in July, 1902, except that they caused the American Federation of Labor to declare a boycott against any dealer or dealers who should handle the product of the plaintiffs. (Rec. p. 11; paragraph 19 of the complaint).

About July 25th, 1902, the defendants, in pursuance of their **said general scheme and purpose,** wrongfully, and in violation of the Sherman Anti-Trust Act, as is alleged in the complaint, and with intent to injure the property and business of the plaintiffs by means of acts done and declared to be unlawful by that Act, "entered into a combination and conspiracy to **restrain the plaintiffs and their customers in States other than Connecticut, in carrying on said trade and commerce** among the several States and to **wholly prevent them from engaging in and carrying on said trade and commerce between them,** and to **prevent the plaintiffs from sell-**

ing their hats to wholesale dealers and purchasers in said States other than Connecticut, and to **prevent said dealers and customers in said other States from buying the same,** and to prevent the plaintiffs **from obtaining orders** for their hats from **such customers and filling the same, and shipping said hats to said customers** in said States as aforesaid, and thereby injure the plaintiffs in their property and business and to **render unsalable the product and output** of their said factory, **so the subject of interstate commerce, in whosoever's hands the same might be or come, through said interstate trade and commerce, and to employ as means to carry out said combination and conspiracy and the purposes thereof, and accomplish the same, the following measures and acts, viz. :** To cause, by means of threats and coercion, and without warning or information to the plaintiffs, **the concerted and simultaneous withdrawal of all the makers and finishers of hats then working** for them, who were not members of their said combination, the United Hatters of North America, as well as those who were such members and **thereby cripple the operation of the plaintiffs' factory, and to prevent the plaintiffs from filling a large number of orders then on hand from such wholesale dealers in States other than Connecticut, which they had engaged to fill and were then in the act of filing,** as was well known to the defendants; in connection therewith to declare a boycott against all hats made for sale and sold and delivered, or to be sold and delivered, by the plaintiffs to said wholesale dealers in States other than Connecticut, and to actively boycott the same and the business of those who should deal in them, **and thereby prevent the sale of the same by those, in whose hands they might be or come through said interstate trade in said several States; to procure and cause others of said combination,** united with them in said American Federation of Labor, in like manner to declare a boycott against and to actively boycott the same and the business of such wholesale dealers as should buy or sell them, and of those who should purchase them from such wholesale dealers; to intimidate such wholesale dealers from purchasing or dealing in the hats of the plaintiffs by informing them that the American Federation of Labor had declared a boycott against the product of the plaintiffs and against any dealer who

should handle it, and that the same was to be actively pressed against them, and by distributing circulars containing notices that such dealers and their customers were to be boycotted; to threaten with a boycott those customers who should buy any goods whatever, even though union made, of such boycotted dealers, and at the same time to notify such wholesale dealers that they were at liberty to deal in the hats of any other non-union manufacturer of similar quality to those made by the plaintiffs, but must not deal in the hats made by the plaintiffs under threats of such boycotting; to falsely represent to said wholesale dealers and their customers, that the plaintiffs had discrimated against the union men in their employ, had thrown them out of employment because they refused to give up their union cards and teach boys, who were intended to take their places after seven months instruction, and had driven their employees to extreme measures 'by their persistent, unfair and un-American policy of antagonizing union labor, forcing wages to a starvation scale, and giving boys and cheap, unskilled foreign labor preference over experienced and capable union workmen,' **in order to intimidate said dealers from purchasing said hats** by reason of the prejudice thereby created a ainst the plaintiffs and the hats made by them, among those who might otherwise purchase them; **to use the said union label** of said the United Hatters of North America **as an instrument to aid them** in carrying out said conspiracy and combination against the **plaintiffs' and their customers' interstate trade** aforesaid, and in connection with the boycotting above mentioned, for the purpose of describing and identifying the hats of the plaintiffs, and singling them out to be so boycotted; to employ a large number of agents to visit said wholesale dealers and their customers, at their several places of business, and threaten them with loss of business if they should buy or handle the hats of the plaintiffs, and thereby prevent them from buying said hats, and in connection therewith to cause said dealers to be waited upon by committees representing large combinations of persons in their several localities to make similar threats to them; to use the daily press in the localities where such wholesale dealers reside, and do business, to announce and advertise the said boycotts against the hats of the plaintiffs and said wholesale dealers, and thereby make the same more effective and oppressive, and to use the columns of their said paper, the Journal of the United Hatters of North America,

for that purpose, and to describe the acts of their said agents in prosecuting the same." (Rec., pp. 11–13, inclusive; paragraph 20 of the complaint.)

The defendants proceeded to carry out their conspiracy to restrain and destroy interstate trade and commerce between the plaintiffs and their customers in other States by employing the identical means, which they had contrived to use when they formed it. They are set forth in detail and at much length in paragraph 21 of the complaint (Rec. pp. 13–17, inclusive). The means when employed in concert, were effectively adapted not only to restrain, but to utterly ruin the interstate trade of the plaintiffs.

Assignment of Errors.

(Rec., pp. 30–32.)

1. That the Circuit Court erred in sustaining the first, second, third, fourth, fifth and sixth grounds of the demurrer interposed by the defendants to the complaint of the plaintiffs filed herein, and contained in the first six paragraphs thereof, and in deciding, ordering and adjudging that the complaint in said action be dismissed therefor.

2. That the said Court erred in holding and deciding that the complaint of the plaintiffs did not state facts sufficient to constitute a cause of action against the defendants, and in ordering the complaint dismissed therefor.

3. That the said Court erred in sustaining the first ground of the said demurrer as contained in the first paragraph thereof, to wit: "Because it does not appear therefrom that the plaintiffs and defendants are citizens of different States, and because it does not appear therefrom that the plaintiffs have been injured in their business or property by the defendants or their alleged associates or confederates by reason of anything forbidden or declared to be unlawful by the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies;" and in ordering the complaint dismissed therefor.

4. That the said Court erred in sustaining the second ground of the said demurrer as contained in the second paragraph thereof, to wit: "Because it does not appear from the complaint that any of the defendants, or their alleged associates or confederates, were or are engaged in interstate commerce; and does appear therefrom that the combination and conspiracy, by reason of which the plaintiffs were injured in their property and business, as alleged, was a combination and conspiracy directed against the business of the plaintiffs only;" and in ordering the complaint dismissed therefor.

5. That the said Court erred in sustaining the third ground of the said demurrer, as contained in the third paragraph thereof, to wit: "Because it does not appear from the complaint that the combination and conspiracy, by reason of which the plaintiffs were injured in their business and property, as alleged, was in direct and immediate restraint of interstate commerce; and does appear therefrom that the direct and immediate purpose of said combination and conspiracy was particularly to bring the plaintiffs' factory under union conditions;" and in ordering the complaint dismissed therefor.

6. That the said Court erred in sustaining the fourth ground of the said demurrer as contained in the fourth paragraph thereof, to wit: "Because it does not appear from the complaint that the alleged injury to the plaintiffs' business was by reason of a combination or conspiracy in restraint of interstate commerce; but it does appear that the restraint of interstate commerce, if any, was merely incidental to an alleged conspiracy to injure the plaintiffs' business;" and in ordering the complaint dismissed therefor.

7. That the said Court erred in sustaining the fifth ground of the said demurrer as contained in the fifth paragraph thereof, to wit: "Because it is not alleged in said complaint that the defendants, or any of them, entered into any agreement, combination or conspiracy to restrain the carriage or transportation of the plaintiffs' hats among the several States, or to restrain the plaintiffs from soliciting or making contracts for the sale and delivery of hats to customers in States other than Connecticut;" and in ordering the complaint dismissed therefor.

8. That the said Court erred in sustaining the sixth ground of the said demurrer as contained in the sixth paragraph thereof, to wit: "Because the agreement, combination and conspiracy by reason of which the plaintiffs' business was injured as alleged relates solely to the plaintiffs' hats before they have become or after they have ceased to be, subjects of interstate commerce"; and in ordering the complaint dismissed therefor.

9. That the Court erred in rendering judgment in favor of the defendants and against the plaintiffs, dismissing the complaint.

POINTS.

I.

Construction of Complaint.

The complaint must be considered as an entirety. A combination so great in scope, and complex in its operations necessarily contains elements, which in and by themselves are either innocent or beyond federal jurisdiction. The complaint must stand, if, *as a whole*, it substantially sets forth a combination, whose purpose and effect is to restrain interstate trade.

As with all conspiracies, the plaintiff cannot set forth all the defendants' secret operations with definiteness and particularity. The Supreme Court in the recent case of Swift vs. U. S., 196 U. S., 375, recognized these difficulties in enjoining a conspiracy which was similar in character and not more far reaching in results. It said:

> "Whatever may be thought concerning the proper construction of the statute, a bill in equity is not to be read and construed as an indictment would have been read and construed one hundred years ago, but it is to be taken to mean what it fairly conveys to a dispassionate reader by a fairly exact use of English speech." * * *

> " The general objection is alleged that the bill does not set forth sufficient definite or specific facts. This objection is serious, but it seems to us inherent in the nature of the case. **The scheme alleged is so vast that it presents a new problem in pleading.** If, as we must assume, the scheme is entertained, it is of course contrary to the very words of the statute. Its size makes the violation of the law more conspicuous, and yet the same thing makes it impossible to fasten the principal fact to a certain time and place. The elements, too, are so numerous and shifting, even the constituent parts alleged are and from their nature must be so extensive in time and space that something of the same impossibility applies to them."

Answering the contention in that case, that the various acts which constituted the Beef Trust combination were in themselves either beyond federal authority because intra-State or otherwise lawful, the Supreme Court continues :

> " The scheme as a whole seems to us to be within reach of the law. The constituent elements, as we have stated them, are enough to give to the scheme a body and, for all that we can say, to accomplish it. **Moreover, whatever we may think of them separately, when we take them up as distinct charges they are alleged sufficiently as elements of a scheme. It is suggested that the several acts charged are lawful and that intent can make no difference, but they are bound together as parts of a single plan. The plan may make the parts unlawful."**

II.

The Anti-Trust Law declares "illegal every contract, combination or conspiracy in whatever form, of whatever nature, and whoever may be the parties to it, which directly or necessarily operates in restraint of trade or commerce among the several States." * * * The Act is not limited to restraints of interstate trade or commerce that are unreasonable in their nature, but embraces all direct restraints imposed by any combination, conspiracy or monopoly upon such trade or commerce."

Our fundamental proposition, above stated, is quoted from the decision of this Court in U. S. vs. Northern Securities, 193 U. S., 31, in which the whole subject was exhaustively considered. If the defendants seek to read for their own benefit an exception into this sweeping and all comprehensive language, the burden must be upon them to show some statutory warrant for making them a privileged class.

It matters not that the defendants were members of labor unions and were not themselves engaged in carrying on any form of interstate trade; nor that their operations also embraced restraint of trade within a State; nor that they did not, in addition to the other steps taken by them to effect their purpose, resort to the actual **seizure** of the plaintiffs' hats while **in transit** or otherwise **physically obstruct their transportation;** nor that they combined to restrain and destroy the plaintiffs's interstate trade as a **means** to compel them to "unionize" their factory, as a step in their broader conspiracy to force all hat manufacturers to do so; these circumstances were urged upon the trial Court by the defendants, and it erroneously attached some importance to them in reaching its conclusion.

For Congress has power to declare and has declared, that all interstate trade shall be absolutely free from all direct restriction through combinations, and every such combination stands con-

demned in the express terms of the Statute. **It does not matter what form the combination may take, or who may be the parties to it, or what means may be employed to carry it out or what ulterior purpose may be within its scope.** Whether the restriction itself is the ultimate object, or only a means to accomplish something else, whether the motive is gain to the confederates or to some one else, or merely injury to others, whether the motive is praiseworthy, or is merely wanton and vindictive,—all are equally unimportant. A combination to restrain and prevent the plaintiffs from selling and disposing of their product to customers in other States and to restrain and prevent such customers in other States from buying them, is a combination in restraint of interstate trade as much as a combination to prevent by physical violence their transportation from State to State. It does not matter that it also embraces trade wholly within a State. Indeed, if the destruction of trade within a State is the **means** resorted to, to prevent the customers in that State from buying from the manufacturer or dealer in another State, it is prohibited by the Sherman Anti-Trust Act.

The Circuit Court, while expressing no definite opinion, did suggest as a possible ground for exempting the defendants from the all-comprehensive prohibitions of the Anti-Trust Law, the following :

> " There is no allegation which suggests that the means of transporting plaintiff's product or the product itself while being transported were touched, handled, obstructed or in any manner actually interfered with.
>
> There is no allegation that the defendants are in any way engaged in interstate commerce."

Stating the same doubt in a different way, the defendants' counsel suggested in the Court below, and will probably urge in this Court, that this combination and conspiracy to restrain interstate trade is not within the Sherman Anti-Trust Law, because it does not **directly** operate in restraint of such trade. To these suggestions we reply :

1. Liability under the Anti-Trust Law does not depend upon any **physical** obstruction of interstate transportation.

2. Members of a combination or conspiracy under the Anti-Trust Law are not exempt because they themselves are not actually employed in interstate transportation.

As these propositions are apparently the main grounds, upon which the defendants in error will rely, we will discuss each under separate heads.

III.

Liability under the Anti-Trust Law does not depend upon any physical obstruction of interstate transportation.

Since the case of Gibbons vs. Ogden (9 Wheaton, 1), it cannot be denied that commerce is something more than mere transportation. It also consists in traffic and in that even larger field of interstate communication, to which Marshall gave the all-embracing term of commercial "intercourse."

That the field of interstate commerce includes all essential acts antecedent to physical transportation and subsequent thereto, where necessary to preserve the free flow of such commerce, can no longer be doubted, since the unanimous decision of the Supreme Court in Swift vs. the United States (196 U. S., 375), in which the legality of the so-called Beef Trust was under consideration. In that case a bill was brought against a number of corporations, firms and individuals of different States, alleging that they were engaged in interstate commerce in the purchase, sale, transportation and delivery and subsequent resale at the point of delivery, of meats. It was alleged that they combined,—

a. To refrain from bidding against each other in the purchase of cattle.

b. To maintain a uniform price at which the meats should be sold.

c. To maintain uniform charges in delivering the meats thus sold through the channels of interstate trade to the various dealers and consumers in other States.

In this manner they artificially restrained the commerce in fresh meats from the purchase and shipments of live stock in the plains to the final distribution of the meats to the consumers in the markets of the country.

The attempt to control transportation through secret rebates from the railroads was but a minor and incidental charge in the bill, the substance of which did not affect the physical act of transportation across the States *so much as the original purchase of articles intended for interstate commerce and their sale after delivery in the various markets of the country.*

Referring to the objection that a combination to control purchases of fresh meat, *which were destined for interstate traffic*, did not present a case of commerce among the States, the Supreme Court said :

> " Commerce among the States is not a technical legal conception, but a practical one, drawn from the course of business. When cattle are sent for sale from a place in one State with the **expectation** that they will end their transit after purchase in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stock yards, and when this is a typical, constantly recurring course, **the current thus existing is a current of commerce among the States, and the purchase of the cattle is a part and incident of such commerce."**

It is equally well settled that the federal power does not end with the mere physical delivery of the article transported in the State of destination. As was said by Chief Justice FULLER in Leisy vs. Harden (135 U. S., 100), speaking of the federal power :

> " It is co-extensive with the subject on which it acts and cannot be stopped at the external boundary of the State, but must enter interior **and must be capable of authorizing the disposition of those articles which it**

introduces, so that they may become mingled with the common mass of property within the territory entered."

In Robbins vs. Shelby County Taxing District (120 U. S., 489), a State tax upon commercial travellers, who were engaged in selling articles of interstate commerce **by sample,** was held to be invalid as a direct regulation of intestate commerce. Mr Justice BRADLEY said:

> "To tax the sale of such goods or the offer to sell them **before they are brought into the State** is a very different thing, and it seems to us clearly a tax on interstate commerce itself."

The obvious ground of these decisions and the many others, which support the original package theory, must be that the act of purchasing commodities for interstate transportation, the act of transporting them across the boundaries of a State and the act of re-selling them in the State of destination, are each essential incidents of interstate commerce.

In Addyston Pipe Co. vs. United States (175 U. S., 211), the petition alleged that defendants were practically the only manufacturers of cast iron pipe within a territory embracing thirty-six States and territories and that they had entered into a combination, by which they agreed not to compete with each other in the sale of pipe, and territory, through which the various constituent companies could make sales, was allotted between them. The Supreme Court unanimously held that the agreement, which, **prior to any act of transportation,** limited the prices at which the pipe could be sold **after** transportation, was within the law.

In Chattanooga Foundry Co. vs. City of Atlanta, 203 U. S., 390, this Court sustained a recovery under Section 7 of the Sherman Anti-Trust law in a suit growing out of the combination, which was declared invalid in the Addyston Pipe case. In that case, the City of Atlanta had been made to pay larger prices by certain members of the combination, as a result of the combination. The Court clearly recognized that to prevent a dealer from making any sale to a customer in another State, and therefore preventing altogether the possible transportation of the merchandise, was as much within the law as to enhance the price of a commodity which

had actually been purchased and shipped. The Supreme Court says:

> "One object of the combination was to prevent other producers than the Anniston Pipe and Foundry Company, the seller, from competing in sales to the plaintiff."

Similarly in the case at bar we contend that the avowed object and necessary result of the labor combination was to prevent altogether purchases from the plaintiffs by their customers in other States. **The total prevention of interstate sales, whereby no act of interstate transportation takes place, is as much within the statute as a physical restraint of transportation when it actually commences. Any other conclusion would lead to an absurdity, for otherwise a combination, which absolutely prevents intestate traffic, would be legal, while a combination which simply restrains it would be illegal. Surely a whole evil cannot be less objectionable than a partial evil.**

A later case, which is closely analogous to the case at bar, is Montague vs. Lowry (193 U. S., 38), in which, as in the case at bar, a private citizen brought an action under Section 7 of the Sherman Anti-Trust law against a combination engaged in the manufacture of tiles, to recover treble damages. The defendants were wholesale dealers in tiles in California and combined with manufacturers in other States to restrain the interstate traffic in tiles by refusing to sell any tiles to any wholesale dealer in California, who was not a member of the Association, except at a prohibitive rate. **The case was, therefore, as the case at bar, a commercial boycott against such dealers in California as would not or could not obtain membership in the Association. As in the case at bar, there was no physical or visible obstruction of interstate commerce, the restraint consisting wholly in the fact that the plaintiff and other independent dealers could not purchase their tiles from manufacturers in other States because such manufacturers had combined to boycott them.**

The Supreme Court held unanimously that this obstruction to the purchase of tiles, **a fact antecedent to physical trans-**

portation, was within the prohibition of the Sherman Anti-Trust law. Mr. Justice PECKHAM said:

> "Although the sales of unset tiles were made within the State of California, and though such sales constituted but a small part of the trade involved, agreement of manufacturers not to sell to any but members was part of a scheme, which included the enhancement of the price of unset tiles by the dealers within the State, and **the whole thing was so bound together** that the transactions within the State were inseparable and became a part of a purpose which, when carried out, amounted to, and was, a combination in restraint of interstate trade and commerce.
>
> **The agreement, therefore, restrained trade, for it narrowed the market for the sale of tiles in California** from the manufacturers and dealers therein in other States, so that they could only be sold to the members of the Association, and it enhanced the prices to the non-member."

Under the pleadings in this case, the Court must conclude that there was an existing interstate traffic between the plaintiff and citizens of other States and that for the direct purpose of destroying such interstate traffic the defendants combined not merely to prevent him from manufacturing articles then and there intended for transportation beyond the State, but also to prevent the vendees from either reselling the hats, which they had imported from Connecticut, or from further negotiating with the plaintiff for the purchase and incidental transportation of such hats from Connecticut to the various places of destination. It is true that some of the means, whereby the interstate traffic was to be destroyed, were, when detached, acts within a State and that some of them were in themselves and apart from their obvious purpose and necessary effect, acts beyond the scope of federal authority; but as the Supreme Court clearly ruled in the Swift case, *the acts must be considered as a whole.*

See also,
Addyston Pipe Case, *supra.*
Montague vs. Lowry. *supra.*

The contention, therefore, of the defendants in this case, that because the **means,** which were adopted by the defendants to de-

stroy the plaintiffs' interstate traffic, operated at one end before physical transportation commenced and at the other end after physical transportation ended, is wholly unimportant, **if the purpose of the combination were to prevent any interstate transportation at all; and this, under the pleadings, must be assumed to be the substantial purpose of the combination. That the defendants had as an ulterior purpose the intimidation of the plaintiffs into unionizing their factory, in itself a matter beyond the scope of federal authority, is wholly unimportant.**

IV.

Defendants' claim that the Stock Yards cases (Hopkins vs. United States, 171 U. S., 578, and Anderson vs. United States. idem, 604) support their contention is untenable.

Passing by the question whether the cases, since decided, of U. S. vs. Traffic Asso. 171 U. S., 505; Addyston Pipe Co. vs. U. S., 175 U. S., 211; Montague vs. Lowry, 193 U. S., 38; Northern Securities Co. vs. 193 U. S., 197, and Swift & Co. vs. U. S., 196 U. S., 375 (and incidentally New Haven R. R. Co. vs. Int. Com. Com. 200 U. S. 361, in considering the Interstate Commerce Act), have not in fact distinctly narrowed the field, in which the two cases referred to can have any direct application,—it is certainly true, that they have so clearly and boldly defined the extent of the field, within which the prohibitions of the Anti-Trust Act do operate, as to bring this case within it.

An examination of the Stock Yard cases will show that they distinctly put our case within the statute. In holding the business involved in the first case to be intrastate, and the effects upon interstate trade of the agreements, involved in both cases, to be indirect at the most, the Court points out as decisive the absence of the very features, whose presence in this case brings it within the statute.

The doctrine of the Stock Yards cases is best stated by the Supreme Court in Anderson vs. U. S., 171 U. S., 604, as follows:

> " Where the subject matter of the agreement does not directly relate to and act upon and embrace interstate commerce, **and where the undisputed facts clearly show that the purpose of the agreement was not to regulate, obstruct, or restrain that commerce,** but that it was entered into with the object of properly and fairly regulating the transaction of the business, in which the parties to the agreement were engaged, such agreement will be upheld as not within the statute, where it can be seen that the character and terms of the agreement are well calculated to attain the purpose for which it was formed, and where the effect of its formation and enforcement upon interstate trade or commerce is in any event but **indirect and incidental, and not its purpose or object."**
>
> And on page 618, " We see nothing that can be said to affect the trade or commerce in question other than in the most roundabout and indirect manner. The agreement relates **to the action of the associates themselves,** and it places in effect no tax upon any instrument or subject of commerce; it exacts no license from parties engaged in the commercial pursuits, **and prescribes no condition, in accordance with which commerce in particular articles or between particular places is required to be conducted."**

Under the doctrine of these cases, to exempt such a combination from the operation of the Sherman Anti-Trust law, it is therefore necessary to satisfy the Court—

(a) That there was no purpose to obstruct or restrain interstate commerce.

(b) That the combination was made with the object of regulating the conduct of a purely local business, and does not exceed its reasonable regulation.

(c) That said business must not be interstate commerce, but merely a local aid or facility.

(d) That the effect upon interstate commerce must be indirect and insignificant.

(e) That it must not prescribe any condition upon which interstate traffic may be conducted.

Apply each of these tests to the case at bar, and it is apparent that the Stock Yards cases are not applicable to the case at bar.

(a) There is in the present case a direct purpose to restrain interstate commerce.

It is significant that in the Stock Yards cases the question of the intent, with which the combination was formed, was made a significant element. In the later case of Swift vs. The United States *(supra)*, the Supreme Court said :

> " Intent is almost essential to such a combination and is essential to such an attempt."

Again referring to the Stock Yards cases, the Supreme Court, after clearly distinguishing them from the combination of packers, said of those cases :

> " It was held that the combination did not directly regulate commerce between the States, *and, being formed with a different intent,* was not within the Act."

Unquestionably, as in the Trans-Missouri and Joint Traffic cases, a restraint of commerce may be so direct and palpable that the intent would be a legal conclusion, but in the rational construction of the Interstate Commerce Act, Congress may be assumed not to have intended to apply its sweeping provisions to recognized forms of business association, such as partnerships or corporations, which were valid at common law and formed without any intent or purpose to restrain interstate commerce. The Sherman law has never been applied to such associations. But where a great combination of men is formed and acts are done, which have a direct result in not only obstructing but destroying interstate trade, the object and purpose of the combination may be conclusive as to whether it is

within the prohibition of Congress and the Supreme Court has so ruled. It was the **intent** of the packers to monopolize the interstate traffic in fresh meats which made their various acts, in and by themselves quite legal, illegal ; and similarly it was the clear purpose of the Tile Manufacturers Association (Montague vs. Lowry) to prevent any dealer in California from getting his tiles from manufacturers in other States unless he would join the Association, that made that Association illegal. The most striking case as to intent is the Northern Securities case (193 U. S., 197), where a corporation, formed to acquire controlling interests in competing carriers, was therefore held within the Sherman Anti-Trust law. The intent was in that case of the very essence of the unlawful combination.

In the Stock Yards cases no such purpose was discoverable. A local exchange, analogous to a stock exchange, prescribed due rules for its own orderly government and with no purpose to obstruct interstate trade.

The agreement or combination in that case is set forth in full in 171 U. S. 611 as follows :

> " We, the undersigned, for the purpose of organizing and maintaining a business exchange not for pecuniary profit or gain, but to promote and protect all interests connected with the buying and selling of live stock at the Kansas City Stock Yards, and to cultivate courteous and manly conduct towards each other, and give dignity and responsibility to yard traders, have associated ourselves together under the name of The Traders' Live Stock Exchange and hereby agree, each with the other, that we will faithfully observe and be bound by the following rules and by-laws, and such new rules, additions or amendments, as may from time to time be adopted in conformity with the provisions thereof at the date of organization."

Rules 10, 11, 12 and 13 were as follows :

" Rule 10. This exchange will not recognize any yard trader unless he is a member of The Traders' Live Stock Exchange."

" Rule 11. Where there are two or more parties trading together as partners, they shall each and all of them be members of this exchange."

" Rule 12. No member of this exchange shall employ any person to buy or sell cattle unless such person holds a certificate of membership in this exchange."

" Rule 13. No member of this exchange shall be allowed to pay any order buyer or salesman any sum of money as a fee for buying cattle from or selling to such party."

These were the rules which were alleged to be in violation of the Sherman Anti-Trust Act.

The Supreme Court said, page 613 :

> " There is no evidence that these defendants have in any manner other than by the rules above mentioned **hindered or impeded others in shipping, trading or selling their stock,** or that they have in any way interfered with the freedom of access to the stock yards of any and all other traders or purchasers or hindered their obtaining the same facilities which were therein afforded by the Stock Yards Company to the defendants as members of the Exchange, and we think that the **evidence does not tend to show** that the **above results** have flowed from the **adoption and enforcement** of the rules and regulations referred to. * * * The preamble adopted by the association in this case shows the ostensible purpose of its formation. It was not formed for pecuniary profit, and a careful perusal of the whole agreement fails, as we think, to show that its purpose was other than as stated in the preamble. In other words, we think that the rules adopted do not contradict the express purpose of the preamble, and that the results naturally to be expected from an enforcement of the rules will not directly, if at all, affect interstate trade or commerce. * * * In refusing to recognize any yard trader who is not a member of the exchange, we see no **purpose** of thereby **affecting or in any manner restraining** interstate commerce, which, if affected at all, can only be in a very **indirect** and **remote** manner. The rule has no **direct tendency to diminish** or in any way **impede** or **restrain** interstate commerce in the cattle dealt in by the defendants."

And again on page 619.

> "It has no **tendency**, so far as can be gathered from its object or from the language of its rules and regulations **to limit the extent of the demand** for cattle, or to limit the **number** of the cattle marketed, or to limit or reduce their **price** or to place any **impediment** or **obstacle** in the **course** of the **commercial stream which flows** into the Kansas City cattle market."

And again on page 618,

> "The design of the defendants evidently is to bring all the yard traders into the association as members. * * * Yet all this is done **not with the intent or purpose of affecting in the slightest degree** interstate trade or commerce, and such trade or commerce can be affected thereby only most remotely and indirectly."

This then was the exact case before the Court. Is it not plain that in all the elements of design, means and effect as related to interstate trade, it was the very antithesis of ours? In order to be at all similar in principle to the combination alleged in our complaint, and admitted by the demurrer, and, therefore, presented by "the undisputed facts" the "undisputed facts" established by the evidence in that case should have presented a combination among the members of the Yard Traders' Exchange for the **purpose,** both **avowed and real,** of hindering, **preventing** and destroying **all** interstate trade relations between the **other** yard traders and **their customers** in other States, and to prevent all **buying and selling between them,** and to use **means entirely adequate for such prevention,** and have shown the **actual use** of such means with **that intent** and with the **actual result** of curtailing such interstate trade, in order **to force** the other yard traders into the association.

(*b*) *This combination was not made with the object of properly and fairly regulating the transaction of a local business.*

Here again there is a wide distinction between the two cases. In the Stock Yards cases, nothing more was attempted than the

local government of a local exchange, and to insure responsibility of members for their engagements, provisions were made similar to a stock exchange. In the case at bar, the defendants are not seeking to regulate their own business but the plaintiffs' business. The defendants are not engaged in the manufacture of hats. They have no property rights in the plaintiffs' interstate traffic. They have sought to destroy it simply to terrorize the plaintiffs into regulating their business as the defendants may prescribe.

(c) *The plaintiffs' hat business was interstate commerce, and not merely a local aid or facility.*

The business of handling the stock on commission at the local exchange at Kansas City, while an incident and a local facility of interstate commerce, was expressly held by the Supreme Court not to be interstate commerce, but rather analogous to the cab service, which the Pennsylvania Railroad maintains in this city in connection with railroad transportation. In the case at bar, however, we are dealing, not with a local facility of commerce, but with interstate commerce itself, as it moves from Danbury, Connecticut, to various points of destination throughout the country and as far West asthe Pacific Coast.

(d) The effect of the combination in the present case upon interstate commerce was not indirect and insignificant.

In the Stock Yards cases, the effect upon interstate commerce, if any, was very indirect. The regulation simply provided that a member of the Live Stock Exchange could not deal with any one not a member of the exchange. This did not prevent the independent member from purchasing cattle or otherwise engaging in business. The effect upon commerce, if any, was therefore not only indirect and remote, but it was also insignificant, for there was no proof in the Stock Yards cases that any member of the stock exchange transacted less business because he was a member or that any independent broker was prevented from handling live stock by reason of his non-membership. The Court pointed out that the current of interstate commerce flowed with as much freedom as if no such regulation had existed. In the case at bar, however, the effect of the combination is not indirect, remote or insignificant, but as the conceded facts show, it has largely and actually destroyed

an inter-state traffic between the plaintiffs and many dealers and has inflicted upon them, out of a total interstate traffic of over $400,000, a destruction of an amount equivalent to $80,000.

(e) This combination prescribes conditions upon which interstate traffic may be conducted.

The most that can be said of the Stock Yards decision is that the Supreme Court did not regard as unreasonable an agreement of the members of a local stock exchange to deal only with each other *in a purely local business.* This is wholly different from a combination, which does not seek to regulate its own dealings but which seeks to prevent **other men from engaging in interstate commerce.** The view which the Supreme Court would take of this is best shown by the case of United States v. Debs, 158 U. S., 564, where the Court ruled that, independent of the Sherman Anti-Trust law, the Federal Government had, as an inherent attribute of sovereignty, the power to sweep the channels of interstate commerce free from the obstruction of similar combinations.

The Stock Yards cases made no attempt to prescribe interstate regulations. It left every one free to engage in interstate commerce as he thought best. *In the case at bar, this combination seeks to prescribe the conditions, upon which the plaintiffs and all other hat manufacturers may engage in interstate traffic, and it appears from the pleadings that they have effectually compelled all the hat manufacturers of the country, with the exception of twelve, to engage in interstate traffic subject to the conditions which the defendants imposes.*

It would be easy to point out further grounds of distinction between the Stock Yard cases and the case at bar. Enough, we think, has been shown to show the clear distinction between them.

We fully accept the doctrine of these cases. Rightly interpreted, we believe that they are full authority for the plaintiffs in this case, for in refusing to invalidate the reasonable and lawful agreement of these local exchanges, the Supreme Court has been at great pains to point out the obvious distinction between them and the unlawful combinations of capital and labor, at which the Sherman Anti-Trust law was directed. The combination in the case at bar is a criminal conspiracy at common law. There can no longer be any

doubt, under the decisions in England and the United States, that a combination of men to destroy the business of another for the purpose of compelling him to do something, which he is legally free to abstain from doing, is a criminal conspiracy. To exempt this conspiracy, **whose avowed object is the destruction of traffic,** from the operation of the Sherman Anti-Trust law, would in effect hold that a conspiracy, whose purpose is at common law unlawful and criminal and which seeks to attain its ulterior object by the destruction of interstate trade, is not within the provision of the Sherman Anti-Trust law because its members have not in some physical and visible way prevented the physical transportation of merchandise.

V.

If it be contended that the statement of Mr. Justice Brewer in the Northern Securities case foreshadows a possible ruling by the Supreme Court that the statute extends only to those cases, in which the restraint is unreasonable, or unlawful at common law, we say in reply that the combination, set out in the complaint, would still be within the statute, because such a combination is unreasonable, unlawful, and criminal at common law.

In American and English Decisions in Equity, Vol. 7, page 562, it is said that,

> " The authorities are practically unanimous that a boycott or a threat to boycott of itself, constitutes such an illegal interference with the rights of one who is or is to be boycotted, as will warrant issuing an injunction without proof of force or violence."
>
> " Another unlawful means in common use to hinder and prevent willing employees from working and to compel em-

ployers to accede to terms which they would otherwise not adopt is the boycott in its various forms. This, in whatever form it assumes, is unlawful." (Martin vs. McFall, 55 Atl. Rep. 465.)

"A combination to boycott is an unlawful and criminal conspiracy at common law." (Callan vs. Wilson, 127 U. S., 540.)

"The combinations or conspiracies, which the law does not tolerate, are of a different character. According to the principles of the common law, a conspiracy upon the part of two or more persons with the intent by their combined power to wrong others or to prejudice the rights of the public, is in itself illegal, although nothing be actually done in execution of such conspiracy. This is fundamental in our jurisprudence." Mr. Justice HARLAN, in Arthur vs. Oakes, 63 Fed. Rep., 310, 25 L. R. A., 429, citing Callan vs. Wilson.

To the same effect is Toledo A. A. & N. M. R. Co. vs. Penn. Co., 54 Fed. Rep., 730, per TAFT, J., and the following cases :

Purington vs. Hinchcliff, 219 Ill., 159, 167.
Chicago W. & V. Coal Co. vs. People, 214 Ill., 421.
Doremus vs. Hennessy, 176 Ill., 608.
State vs. Donaldson, 3 Vroom, 151 (90 Am. Dec., 649).
State vs. Stewart, 59 Vt., 293 (59 Am. Rep., 710).
Sherry vs. Perkins, 147 Mass., 2k2 (9 Am. St. Rep., 689).
Crump vs. Com., 84 Va., 927 (10 Am. St. Rep., 895; 6 S. E. Rep., 620.
Erdman vs. Mitchell, 207 Pa. St., 79 (99 Am. St. Rep., 783; 56 Atl., 327).
Gatzow vs. Bruening, 106 Wis., 1 (49 L. R. A., 475; 80 Am. St. Rep., 17).
Old Dominion S. S. Co. vs. McKenna *et al.*, 30 Fed., 48.
Reg vs. Rowlands, 17 A. and E. (N. S.), 671, 685.
Loewe vs. California State Federation of Labor, 139 Fed. Rep., 71.

Many other cases in the State and Federal authorities could be cited, if the point were longer disputable.

VI.

Members of a combination or conspiracy under the Anti-trust law are not exempt because they are not engaged in interstate transportation.

The defendants seek to create a new exemption from the Anti-trust law, for which there is no justification in any recorded decision and which alone gives to this case the merit of novelty. They contend that the Sherman law is inapplicable because the defendants are not themselves engaged in interstate commerce.

Congress did not provide that one class in the community could combine to restrain interstate trade and another class could not. It had no respect for persons. It made no distinction between classes. It provided that "**every**" contact, combination or conspiracy in restraint of trade was illegal.

The legislative history of the Sherman Anti-Trust Law clearly shows that its applicability to combinations of labor as well as of capital was not an oversight. The history of the legislation commences on August 14, 1888, when Senator Reagan and Senator Sherman both introduced bills to declare trusts and combinations in restraint of trade unlawful. Neither contained any exemption of combinations of labor. Senator Sherman's bill, which formed the basis of the subsequent Sherman Anti-Trust Law, was referred to the Committee on Finance, of which he was then Chairman and which reported the bill favorably on September 11, 1888. No extended debate resulted until the following year, when, in the debate of February 4, 1889, Senator George called attention to the fact that the bill, as then reported, would be applicable to farmers and laborers (See Congressional Record, Vol. XX, p. 1459).

The proposed legislation received little serious consideration until March 21, 1890, and days following, when it was exhaustively debated. In the course of that debate attention was repeatedly called to such application of the bill. Thus on March 24, 1890 (Congressional Record, Vol. XXI, p. 2571), Senator Teller said :

> "I believe this bill will go further than that ; I believe it will interfere with the Knights of Labor as an organization."

And Senator Hiscock, following him, said:

"And it would practically include all the trades Unions."

Realizing that the bill would apply to labor combinations, Senator Sherman on March 25, 1890, offered the following amendment to Section 1 of his bill:

> "Provided that this Act shall not be construed to apply to any arrangements, agreements or combinations between laborers, made with a view of lessening the number of hours of labor or of increasing their wages, nor to any arrangements, agreements or combinations among persons engaged in horticulture or agriculture, made with a view of enhancing the price of agricultural or horticultural products."

This amendment was adopted.

Subsequently, on March 27, 1890, the bill, as amended, was recommitted to the Senate Committee on Judiciary, which on April 2, 1890, reported a substitute bill, *which wholly omitted the amendment exempting organizations of farmers and laborers, and this bill, as reported, became a law on July 2, 1890.* The exempting amendment was, however, not omitted until there had been a debate as to the propriety of discriminating in favor of labor organizations, in which Senators Stewart, Hiscock, Hoar, Teller and George, participated. It is significant that after the Sherman law was enacted bills were introduced in the Fifty-second Congress, H. R., 6640, Sec. 1; 55th Congress, Senate 1546, Sec. 8; H. R., 10539, Sec. 7; 56th Congress, H. R., 11667, Sec. 7; 57th Congress, S., 649, Sec. 7; H. R., 14947, Sec. 7, to amend the Sherman Anti-Trust Law so that it would be inapplicable to labor organizations, and while one of these (H. R., 10539, Sec. 7) passed the House in the 56th Congress, none ever became a law.

Congress, therefore, has refused to exempt labor unions from the comprehensive provisions of the Sherman law against combinations in restraint of trade, and this refusal is the more significant, as it followed the recognition by the Courts that the Sherman Anti-Trust Law applied to labor organizations.

The question first arose in United States vs. Workingmen's Amalgamated Council, 54 Fed. Rep., 994. In that case the United

States filed a bill under the Sherman Anti-Trust Law, in which, as in the pre ent case, it averred the existence of

> " a gigantic and widespread combination of the members of a multitude of separate organizations for the purpose of restraining the commerce among the several States and with foreign countries."

It was contended there, as here, that the case did not fall within the purview of the Sherman Anti-Trust Law and that the statute did not refer to combinations of laborers. The Court said:

> " I think the Congressional debates show that the statute had its origin in the evils of massed capital; but, when the Congress came to formulating the prohibition which is the yardstick for measuring the complainant's right to the injunction, it expressed it in these words: ' Every contract or combination in the form of trust, or otherwise in restraint of trade or commerce among the several states or with foreign nations, is hereby declared to be illegal.' The subject had so broadened in the minds of the legislators that the source of the evil was not regarded as material, and the evil in its entirety is dealt with. They made the interdiction include combinations of labor, as well as of capital; in fact, all combinations in restraint of commerce, without reference to the character of the persons who entered into them. It is true this statute has not been much expounded by judges, but, as it seems to me, its meaning, as far as relates to the sort of combinations to which it is to apply, is manifest, and that it includes combinations which are composed of laborers acting in the interest of laborers."

The Court added:

> " It is the successful effort of the combination of the defendants to intimidate and overawe others who were at work in conducting or carrying on the commerce of the country, in which the court finds their error and their violation of the statute. One of the intended results of their combined action was the stagnation of all the commerce which flowed

through New Orleans. This intent and combined action are none the less unlawful because they included in their scope the paralysis of all other business within the city as well."

The defendants appealed from the injunction to the Circuit Court of Appeals for the Fifth Circuit, which on June 13, 1893, affirmed the lower Court, which held that the subject matter of the controversy was "clearly within the statute."

Previous to this decision, the Circuit Court sitting in the Western District of Georgia, reached the same conclusion in Waterhouse v. Comer, 55 Fed. Rep., 149.

The following year came the great Pullman strike, originating in Chicago, but paralyzing interstate commerce throughout the centre of the country, until the United States, proceeding under the Sherman Anti-Trust Law, and invoking the Federal power over interstate commerce, ended this widespread obstruction to interstate commerce. The decisions both of the Circuit Courts, the Circuit Courts of Appeal and the Supreme Court were uniformly to the effect that labor organizations or laborers as a class were not exempted from the provisions of the Sherman Anti-Trust Law.

In United States vs. Elliott, the Circuit Court for the Eastern District of Missouri, 62 Fed. Rep., 801, the United States, proceeded against the officers of the American Railway Union, and the Court followed the New Orleans case by granting the injunction.

In Thomas vs. Cincinnati Railway Company (Circuit Court for the Southern District of Ohio), 62 Fed. Rep., 803, the Court, in an exhaustive opinion by Circuit Judge TAFT, discussed the whole question of the relation of labor boycotts, when they seek to obstruct the free flow of commerce, to the Sherman Anti-Trust Law. He held that a combination to incite the employees of all the railways of the country to quit their service for the purpose of coercing a railroad company and the public into compelling the Pullman Company to pay its employees more wages is an unlawful conspiracy and, its purpose being to paralyze the interstate commerce of the country, is within the Act of July 2, 1890. The opinion of Judge TAFT, in which Judge LURTON concurred, followed the previous rulings of Judges WOODS, ALLEN, GROSSCUP, of the Seventh Circuit, and WILSON of the Eighth Circuit, to the same effect.

Finally the whole matter was reviewed by the Supreme Court in the case of *in re* Debs, 158 U. S., 564, in which a bill was filed

by the United States against the officers of the American Railway Union, which alleged in substance that a labor dispute existed between the Pullman Palace Car Company and its employees; that thereafter the four officers of the Railway Union combined together and with others, to compel an adjustment of such dispute by creating a boycott against the cars of the Car Company; that to make such boycott effective, they had already prevented certain of the railroads running out of Chicago from operating their trains; that they had asserted that they could and would tie up, paralyze and break down any and every railroad company which did not accede to their demands, and that the purpose and intention of the combination was

> "to secure unto themselves the entire control of the interstate, industrial and commercial business in which the population of the city of Chicago and of other communities along the lines of road of said railways are engaged with each other, and to restrain any and all other persons from any independent control or management of such interstate, industrial or commercial enterprises save according to the will and with the consent of the defendants."

In the lower Court, the issuance of the injunction had been rested upon the Sherman Anti-Trust Law. The Supreme Court, expressly disclaiming any dissent from this conclusion of the Circuit Court, rested its judgment on an inherent right of the Federal Government to clear the channels of interstate trade from any obstruction by proceedings in equity.

Wherever the question has arisen, therefore, the United States Courts have uniformly held that labor combinations to restrain or obstruct interstate commerce are as much within the Sherman Anti-Trust Law as similar combinations of capital.

In United States vs. Freight Association (166 U. S., 356), Mr. Justice WHITE said, referring to the case of *in re* Debs (158 U. S., 564):

> **"It has been held in a case involving a combination of workingmen, that such combinations are embraced in the act of Congress in question, and this view was not doubted by this Court. In re Debs, 64 Fed. Rep. 724, 745-755; 158 U. S. 564."**

To hold that the Act permitted those to restrain interstate commerce who were not engaged in it would be to read into the Act something, which a microscope could not discover in its language, and it would bring to pass the very anomaly, so strikingly stated by Mr. Justice BREWER in the great case growing out of the Pullman strike in 1894 (*in re* Debs, 158 U. S., 564), where he said:

> "It is curious to note the fact that in a large proportion of the cases in respect to interstate commerce brought to this Court, the question presented was of the validity of State Legislation in its bearings upon interstate commerce, and the uniform course of decision has been to declare that it is not within the competency of the State to legislate in such manner as to obstruct interstate commerce. **If a State with its recognized powers of sovereignty, is impotent to obstruct interstate commerce, can it be that any mere voluntary association of individuals within the limits of that State has a power, which the State itself does not possess?**"

The ingenious suggestion of the defendants that those only can combine to restrain interstate trade who are engaged in it, is but an indirect method of suggesting to the Court that an invidious distinction be drawn between combinations of labor and combinations of capital, and that the former be given authority to do that which the other class is forbidden to do. Happily the Federal Courts have long since repudiated any distinction, so hostile to the spirit of our institutions. They have declined to issue letters of marque and reprisal to labor combinations to destroy that current of interstate traffic, to protect which the Federal Constitution itself was called into existence.

This power over interstate commerce is now claimed by a voluntary combination of individuals, for in the last analysis their claim is that they can combine to destroy an existing interstate traffic, innocent in itself, unless that traffic be conducted upon conditions which meet their approval. The combination says in effect to the plaintiffs, as it has already successfully said to all other hat manufacturers in this country except twelve, that unless they are willing to employ such class of men as the combination approves, they are prohibited from engaging in interstate commerce and that any attempt to engage in such commerce will be met by its destruction.

If it can lawfully regulate the plaintiffs' interstate trade, it can regulate the interstate trade of every hatter, and if it can regulate one class of interstate trade, it can regulate every class of interstate trade. It is conceivable that the entire interstate traffic is manufactured commodities might be wholly destroyed and that its resumption would only be permitted, subject to the power of labor organizations to regulate commerce among the States. This result would vest in a combination of individuals a power destructive of the great purpose, which brought the Federal Constitution into existence, namely the freedom of interstate trade.

JAMES M. BECK,
DANIEL DAVENPORT,
Counsel for Plaintiffs in Error.

IN THE SUPREME COURT.

OCTOBER TERM, 1907.

No. 389.

Supreme Court, U. S.
FILED
DEC 16 1907
JAMES H. McKENNEY,
Clerk

DIETRICH E. LOEWE
AND
MARTIN FUCHS,
Plaintiffs in Error,
vs. (*Plaintiffs below*),

MARTIN LAWLOR ET AL.,
Defendants in Error,
(*Defendants below*).

ORAL Arguments for Plaintiffs in Error made before the Supreme Court, December 4 and 5, 1907.

[Stenographically Reported.]

JAMES M. BECK,
DANIEL DAVENPORT,
Counsel for Plaintiffs in Error.

C. G. Burgoyne, Walker and Centre Streets, N. Y.

In the Supreme Court of the United States.

DIETRICH E. LOEWE and MARTIN FUCHS, Plaintiffs in error, vs. MARTIN LAWLOR, ET AL., Defendants in error.	October Term, 1907, No. 389.

WASHINGTON, D. C., Wednesday, December 4, 1907.

The above entitled cause came on for hearing before the Court one o'clock on the above date.

Present on behalf of the plaintiffs in error, JAMES M. BECK, ESQ., nd DANIEL DAVENPORT, ESQ.

Present on behalf of the defendants in error, JOHN KIMBERLY EACH, ESQ., JOHN H. LIGHT, ESQ., ROBERT DEFOREST, ESQ., and OWARD W. TAYLOR, ESQ.

Present, also: T. C. SPELLING, ESQ., on behalf of the intervenor, e American Federation of Labor.

pening Argument of James M. Beck, Esq., on Behalf of Plaintiffs in Error.

MR. BECK: If the Court please:

The plaintiffs below filed a suit under section 7 of the Sherman nti-trust law, claiming threefold damages by reason of injuries flicted upon them by a combination and conspiracy declared to be lawful by the Sherman Anti-trust law.

THE CHIEF JUSTICE: Who was the plaintiff below?

MR. BECK: Mr. Loewe and his partner. I shall call the plaintiff Mr. Loewe for the sake of convenience.

A demurrer was filed to that complaint, and the learned Circuit Justice, with some hesitation and diffidence, thought that the complicated statement of facts in the complaint did not present a case which, under any present decision of this Court, was within the Sherman anti-trust law; although he disclaimed any suggestion as to what the Court might do if the case should eventually come before it.

On appeal, the Circuit Court of Appeals certified to this Court, for instruction, a question which attempted to embody the facts set forth in this rather complicated complaint.

MR. JUSTICE HARLAN: The Circuit Court gave judgment for the defendants?

MR. BECK: Yes, and dismissed the bill.

Upon application both of the defendants and of the plaintiff, on the ground that the statement of facts in the certificate of the Circuit Court of Appeals hardly expressed adequately the facts averred in the complaint, this Court required, under section 6 of the Circuit Court of Appeals Act, the entire record to be brought before it, and it thereby, under that Act, becomes its duty to pass upon the whole question as though it were here on writ of error.

The complaint, to which the demurrer has been filed, is, as I have said, a very long and complicated one. If the demurrer was simply as to some clerical or technical omission, I think that all counsel would feel abashed at taking up the time of the Court, as such defects could readily be cured by amendment. But the demurrer is a broad challenge to the right of the plaintiffs under the circumstances set forth in the complaint, by any form of language, to bring themselves within the application of the Sherman anti-trust law; and therefore the issue before this Court is a much broader one than any mere question of pleading.

Of this bill it can be said, as was said by this Court of the complaint filed in the case of United States vs. Swift, that "the

scheme alleged is so vast that it presents a new problem in pleading."

I cannot, without unduly trespassing upon my colleague's time, attempt to do full justice to the averments of the bill, but I think I can summarize its essential averments.

The first nineteen paragraphs of the bill are practically matters of preliminary explanation and inducement; and, summarizing them briefly, they amount to this:

The plaintiff, Dietrich Loewe, was a manufacturer of hats, in the State of Connecticut and in the city of Danbury. He had a factory there, in which he had invested about $130,000; he employed some 230 men, and was then and there engaged in an interstate trade with some twenty States other than the State of Connecticut, which amounted to about $400,000 per annum.

It is averred here in the complaint that he was practically dependent upon such inter-state trade to consume the product of his factory, and that less than ten per cent. of his entire output was consumed in the State of Connecticut.

It is further averred that at the time this alleged conspiracy was formed that he was in the process of manufacturing a large number of hats for the purpose of fulfilling engagements then actually made with consignees and wholesale dealers, in States other than Connecticut, and that, if he were prevented from carrying on the work of manufacturing these hats, he would be thus unable to complete his engagements.

It is further averred that Mr. Loewe labored under the illusion that he had the right to run his factory as he thought best, always subject, of course, to such reasonable police regulations as the government, in its representative capacity, might impose; and that among other beliefs that he entertained with respect to his business was the belief that it was vital to its welfare that it should be run on what is called the "open shop" basis, namely, that he should employ all of his labor without any discrimination as to whether it was union or non-union labor.

It is averred that the defendants were members of a vast com-

bination called The United Hatters of America, comprising about 9,000 members, and including in its organic machinery a large number of subordinate unions, and that it was only one wheel in a still more intricate piece of machinery, the whole of which was denominated The American Federation of Labor. That organization at that time comprised 1,400,000 members in various parts of this country, including 12,000 local unions, 28 State Federations, 500 central labor unions and more than 2,000 local unions; and that it operated through an executive committee which, in the interval between annual meetings, had the control of the vast collective force of this body of men; and that for the purpose of enforcing its boycotts upon such trade, either domestic or interstate, as it might think proper, it employed 1,000 organizers, who went through all the country, and, wherever it was deemed essential for the welfare of the American Federation of Labor, actively pushed the boycott upon the interstate trade of recalcitrant manufacturers.

We come now to the first explanation of the conspiracy, and when I come to an essential averment I shall venture to read it.

It is averred that this American Federation of Labor, of which the defendants, being residents of Connecticut, were members, and therefore of the conspiracy, was

> "engaged in a combined scheme and effort to force all manufacturers of fur hats in the United States, including the plaintiffs, against their will and their previous policy of carrying on their business, to organize their workmen into an organization, to be part of the United Hatters, and thereby unionize their shops, with the intent thereby to control the employment of labor and to subject the same to the direction and control of persons other than the owners of the same"—

And then follows this important averment—

> "And to carry out such scheme by restraining and destroying the interstate trade and commerce of such man-

ufacturers by means of intimidation of and threats made to such manufacturers and their customers in the several States, of boycotting them, their product and their customers."

In pursuance of this scheme, we further aver that the conspiracy had so far progressed that out of eighty-two manufacturers of this country engaged in the production of hats, seventy had bent the knee to Baal, that seventy had surrendered their manhood and right to run their factories as they pleased, and had accepted the terms; for it was the custom of the American Federation of Labor and of the United Hatters not to proceed simultaneously against all manufacturers, but to take them one by one and focus the vast collective power of this army of 1,400,000 persons upon one manufacturer at a time.

Seventy manufacturers having thus acceded to the demand that the shops should be conducted in accordance, so far as the conditions of employment were concerned, with the will of the American Federation of Labor, it then came the turn of the plaintiff. Like one of the Girondists, he had awaited his summons to the Place de la Revolution, where he was to be decapitated. He was the next on the list. Fortunately the defendants encountered an obstinate German, who would much rather be ruined and free than to be prosperous and subject to a form of commercial slavery.

The local union having demanded that he should unionize his shop under peril of being boycotted by this great combination of 1,400,000 people, he replied, in the language of the complaint:

> "Firmly believing that we are acting for the best interests of our firm, for the best interests of those whom we employ, and for the best interests of Danbury, by operating an independent or open factory, we hereby notify you that we decline to have our shop unionized, and if attacked shall use all lawful means to protect our business interests."

Thereupon, it is averred, the American Federation of Labor, acting through its official organ and through these thousands of

organizers, declared a boycott. Word went from the Atlantic to the Pacific that an embargo should be put on the plaintiffs' hats, and that no man, who dealt in them, should be permitted to transact any business.

Having thus summarized the first nineteen paragraphs of the bill, I come to the essential averment of the bill, and I beg the Court's indulgence while I read it:

> "On or about July 25, 1902, the defendant individually and collectively, and as members of said combinations and associations, and with other persons whose names are unknown to the plaintiffs, associated with them, in pursuance of the general scheme and purpose aforesaid, to force all manufacturers of fur hats, and particularly the plaintiffs, to so unionize their factories, wantonly, wrongfully, maliciously, unlawfully and in violation of the provisions of the 'Act of Congress, approved July 2, 1890,' and entitled 'An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies', and with intent to injure the property and business of the plaintiffs by means of acts done which are forbidden and declared to be unlawful, by said Act of Congress, entered into a combination and conspiracy to restrain the plaintiffs and their customers in States other than Connecticut, in carrying on said trade and commerce among the several Srates, and to wholly prevent them from engaging in and carrying on said trade and commerce between them and to prevent the plaintiffs from selling their hats to wholesale dealers and purchasers in said States other than Connecticut, and to prevent said dealers and customers in said other States from buying the same, and to prevent the plaintiffs from obtaining orders for their hats from such customers, and filling the same, and shipping said hats to said customers in said States as aforesaid, and thereby injure the plaintiffs in their property and business and to render unsalable the product and output

of their said factory, so the subject of interstate commerce, in whosoever's hands the same might be or come, through said interstate trade and commerce, and to employ as means to carry out said combination and conspiracy and the purposes thereof, and accomplish the same, the following measures and acts, viz : "

While, therefore, it was unnecessary, having averred a combination and conspiracy, to go further and specify the means, whereby the unlawful combination and conspiracy was to be carried out, (for I take it the gist of the offense is in the unlawful combination and conspiracy, and the means, whether effective or ineffective, are not of controlling importance except as they bear upon the question of damages) yet, for the sake of particularity, we went further and specified the means whereby the conspiracy should be carried out substantially as follows :

(a) To cause, by means of threats and coercion, and without warning or information to the plaintiffs, the concerted and simultaneous withdrawal of all the makers and finishers of hats * * * and thereby cripple the operation of the plaintiff's factory and prevent the plaintiffs from filing a large number of orders then on hand from such wholesale dealers in States other than Connecticut, which they had engaged to fill and were then in the act of filling, *as was well known to the defendants.*

(b) To declare a boycott against all hats made for sale and sold and delivered, or to be so sold or delivered, by the plaintiffs to said wholesale dealers in States other than Connecticut.

(c) To actively boycott the business of those who should deal in them, and thereby prevent the sale of the same by those, in whose hands they might be or come through said interstate trade in said several States.

(d) To procure others to declare such a boycott.

(e) To intimidate wholesale dealers from purchasing or dealing in the hats of the plaintiffs.

(f) To notify wholesale dealers that they were at liberty

to deal in the hats of any other non-union manufacturer of similar quality to those made by the plaintiffs, but must not deal in the hats of the plaintiffs.

(*g*) To falsely represent that plaintiffs had discriminated against union men, etc.

(*h*) To employ a large number of agents to visit such wholesale dealers "—meaning the wholesale dealers to whom the plaintiffs consigned their products in the usual course of interstate trade—and threaten them with loss of business, if they would buy or handle the hats of the plaintiff, and thereby prevent them from buying said hats."

We have averred, having given those as the means, that this conspiracy was most effective; that as a result of this vast combination of 1,400,000 men, our trade was actually injured. I mean our interstate trade, not our trade in the State of Connecticut; but our interstate trade was actually injured to the extent of $80,000, and for that, or rather for three times the amount, we ask damages under the Sherman anti-trust law.

MR. JUSTICE MOODY: As I understand, your whole action is based on the Sherman law?

MR. BECK: Entirely so. There is no diversity of citizenship.

MR. JUSTICE MOODY: And it is not material to inquire whether there are any wrongs set forth in your declaration, unless they come within the Sherman act?

MR. BECK: That is so.

MR. JUSTICE MOODY: The precise question here is whether the combination, which you have described in your declaration, is a combination in restraint of trade, in the sense in which those words are used in the Sherman act.

Mr. BECK: Yes, sir.

MR. JUSTICE MOODY: And that is the only question?

MR. BECK: That is the only question.

This case, if it otherwise lacked general interest, derives a special interest from the petition that was filed yesterday in behalf of the substantial, although not the nominal,

defendants in the case, because it is obvious as we are suing these two hundred men in Connecticut as members of the American Federation of Labor, that the real defendant in the case is the American Federation of Labor; and therefore I had no objection whatever to its being permitted to intervene and to file a brief in the case. Its petition to intervene, I think, gives this case exceptional interest, at least to the public at large, for it flatly justifies its embargo upon interstate commerce, by stating—to quote its language:

> "That a decision herein in favor of the plaintiff in error would seriously obstruct and hinder the said American Federation of Labor, petitioner, in carrying out the purposes for which it was organized. * * * That the constitution of said American Federation of Labor, petitioner, makes special provision for the prosecution of boycotts, so called, when instituted by a constituent or affiliated organization as is described in the complaint filed in the District Court by the plaintiff in error herein, through the agency and pursuant to the approval of the Executive Council of Petitioner."

And it goes on to say, with almost unblushing effrontery, considering that boycotts are pronounced unlawful and criminal by nearly every federal and state court in the country:

> "That under the provisions of said constitution many so-called boycotts have been and several are now being prosecuted by petitioner pursuant to approval of its said Executive Council."

Therefore I believe it is not rhetorical extravagance to say that this case, with this extraordinary petition for intervention, presents to us, even more nakedly than the case of *in re* Debs, which, I think, is its nearest analogue, an issue between commercial freedom and commercial slavery; for if this vast body of men, now nearly two

million in number, representing with their families—because they are adults—a potential collective power of nearly ten million human beings in this country, can, by its collective force, practically force manufacturers in this country to surrender their right, otherwise clear, to operate their factories as they please, it is quite conceivable, if it is not probable, that the entire control, at least over the conditions of labor, will pass into the hands of an executive council in this city, whose edict (just as Mr. Justice BREWER pointed out in his opinion in the Debs case) will be greater than the power of the sovereign States themselves, to determine upon what conditions interstate trade can be carried on.

Let us eliminate, if the Court please, any question of whether or not this bill of complaint is confined to interstate trade. There are undoubtedly facts averred in this complaint which, standing by themselves, are matters wholly concerning the States, and within their police powers, and, therefore, in and of themselves, they would not present a cause of action under the Sherman law. But, as your Honors said in the case of United States vs. Swift, they are parts of a plan, and the man who drew this complaint has, I think with great skill, woven all these facts, which were but the means to an end, into a united plan, that plan being, primarily, or at least for the purposes of this case, to compel the plaintiff to accede to the defendants' unreasonable demands under penalty of the destruction of his interstate trade. There is no other question in this case than whether the American Federation of Labor, or these defendants, have the power, by appropriate and effective means, not merely to physically stop the transportation of our hats, but to do that, which is far more subtle, far more dangerous, far more effective, to destroy by coercion our market for our products, and to coerce every consignee, to whom heretofore we have been in the habit of consigning our hats, from daring to purchase them from us, as they otherwise would.

MR. JUSTICE HARLAN: Is the case before us upon demurrer, admitting the facts to be properly alleged?

MR. BECK: Yes, sir. Contenting myself with this inadequate

statement of the facts of the case, let me pass to the law applicable thereto.

In the first place, it seems to me important, and, at the risk of seeming to be a little elementary, I want to suggest the broad fundamental basis upon which the courts of this country and England have always based the doctrine of restraints of trade, and the legal inhibitions of them.

I think in recent years it has too often been lost sight of that the real justification for the prohibition of restraints of trade is not merely the economic result in the enhancement of prices, as to which there may be considerable difference of opinion, as an economic doctrine; but it rests upon the far broader ground of the fundamental right of a man to engage in business as he thinks best, always subject to the control of just and equal legislation. In other words, when the question of what is a restraint of trade which will be permitted is based simply upon its effect upon prices, you have, in effect, put the pyramid upon its apex, and upon less tenable ground, because I think many economists are now honestly questioning whether unrestricted competition on the one hand or restriction of competition on the other has a direct result upon the enhancement of prices to the consumer.

But in the earlier decisions the pyramid is put upon its base—namely, that where the restriction is of the right of another man, a stranger to the combination, to engage in trade, there fundamental rights are at stake, and considerations that might be applicable to mere questions of effect upon prices between parties to a contract, one of whom voluntarily restricts his power to compete, are not necessarily controlling when you come to this very fundamental personal right to which I refer.

For instance, to illustrate my thought, in the case of Mogul Steamship Company vs. McGregor, 21 Queen's Bench Division, one of the Justices said:

> "*Prima facie*, a trader in a free country in all matters not contrary to law may regulate his own mode of carrying on his trade according to his own discretion and choice."

That was the definition of a great English jurist as to what was "freedom of trade."

Here is the definition of Sir WILLIAM ERLE, Chief Justice of the Common Pleas, as to what is "restraint of trade":

> "At common law, every person has individually and the public also has collectively, a right to require that the course of trade should be kept *free from unreasonable obstruction.* Such right is of great importance to commerce and productive industry, *and has been carefully maintained by those those who have administered the common law.*"

Lord ELDON, in a case which was decided just a century ago, the case of Cousins vs. Smith, 13 Vesey, 541 (1807), held, where a combination of grocers was formed to dictate the prices under which fruit should be sold in the City of London, that it was not merely a question of how it should affect the consumer in London, but it had a vital concern to the public weal as it affected the right of the independent trader to engage in the selling of fruit in the London market, and therefore was a "conspiracy against the vendors."

To the distinction between the two classes of restraints of trade, to which Mr. Justice HOLMES called attention in his dissenting opinion in the Northern Securities case, namely, the restraint of trade, where one party to a contract *voluntarily* restricts his right to compete, and public policy says "we cannot compel you to compete, but at least we will prevent you from agreeing not to compete," and to the other class, of which this is one, where a combination of men try to compel a third party and a stranger, *involuntarily*, not to engage in the course of trade except on conditions that the combination imposes. In the second class of cases the principles that are applicable are much broader.

This Court has passed upon the Sherman anti-trust law, in fourteen different cases. In eight the combination was held to be invalid, and in six it was sustained; and without making any extended reference to them, I believe that the best argument I can make is to show that one consistent doctrine has run through the entire fourteen cases, and that the very circumstances which con-

trolled the six cases, where it was held not to be a direct restraint of commerce, are not in this case, whereas the same circumstances that constrained this Court to hold invalid other combinations of men are found in this complaint.*

I believe the fundamental rule to be as Mr. Justice HARLAN stated it in the Northern Securities case, and with the statement of the rule, notwithstanding that it was not the opinion of the entire Court, I do not think any member of the Court would dissent. Mr. Justice HARLAN said :

That the anti-trust law declares

> "illegal *every* contract, combination or conspiracy in *whatever* form, of *whatever* nature, and *whoever* may be the parties to it, which directly or necessarily operates in restraint of trade or commerce among the several States. * * * The Act is not limited to restraints of interstate trade or commerce that are unreasonable in their nature, but embraces all direct restraints imposed by any combination, conspiracy or monopoly upon such trade or commerce."

Starting with that fundamental proposition, it remains to consider those cases, which have been found to be exceptions to it ;

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* CASES IN SUPREME COURT, UNDER SHERMAN ANTI-TRUST LAW.

Cases in which combination held valid :

U. S. v. Knight, 156 U. S., 1 ;
Hopkins v. U. S., 171 U. S., 578 ;
Anderson v. U. S., 171 U. S., 604 ;
Bement v. Harrow, 186 U. S., 70 ;
Chicago Board v. McChristie, 198 U. S., 236 ;
Cincinnati Packet Co. v. Bay, 200 U. S., 179.

Cases held invalid :

In re Debs, 158 U. S., 564 ;
U. S. v. Trans Missouri Assn., 166 U. S., 290 ;
U. S. v. Joint Traffic Assn., 171 U. S., 505 ;
U. S. v. Addyson Pipe Co., 175 U. S., 211 ;
Montague v. Lowry, 193 U. S., 38 ;
U. S. v. Northern Securities, 193 U. S., 197 ;
U. S. v. Swift, 196 U. S., 375 ;
City of Atlanta v. Chattanooga, 203 U. S., 390.

and I think in every case your Honors will find two things have existed : First, that the combination declared to be legal in the six cases showed an absolute absence of any purpose or intent to restrain interstate commerce ; and, secondly, that without respect to such purpose and intent, the interference with interstate commerce was, to use your Honors' language, remote, indirect, collateral and insignificant.

First, as to this question of intention, which, especially when a combination or conspiracy is alleged, must be of controlling importance.

It has interested me to see, in every case this Court has decided, how insistently you have impressed the bar with the fact that the primary criterion in determining the legality or illegality of such a contract is its manifest purpose and object. It is true that you said in the Trans-Missouri and the Joint Traffic cases, where you were dealing not with a state of mind, which had to be gathered from circumstances, but with a written contract, which you could interpret yourself, that where it was perfectly plain that such contract directly restrained interstate commerce, it was not necessary for the pleader to aver or prove intent. Why? Because the object and purpose of a contract that directly restrains interstate trade follows as a legal presumption.

But, with this apparent exception, if you can call it such, your Honors have always said that primarily you will start your consideration with the question : What is the purpose of this contract?

I am not afraid that this Court will make the mistake of confusing motive with object and purpose. They are radically different. The motives of these gentlemen in trying to ruin our business are matters of their own concern. We care not whether it is to benefit labor, to raise its condition, or what, for the purposes of this case. They may have the best motive ; they may have the worst motive. It is enough to say that motive and object are very different things ; and therefore it is not motive but *object* and *purpose*, of which I am speaking.

The first case your Honors passed upon, where you held

the agreement valid, was the case of United States vs. Knight. Observe how careful the Court was to base the acquisition of those four Philadelphia refineries upon the proposition that the mere acquisition of stocks in these refineries disclosed, according to the proofs in the case, no purpose or object to restrain interstate commerce. The Court said:

> "Combinations to control domestic enterprises may indirectly affect interstate commerce, but such result would not necessarily determine the *object* of the combination or conspiracy. The *object* was manifestly private gain in the manufacture of a commodity, but not through the control of interstate or foreign commerce. There was nothing in the proofs *to indicate any intention to put a restraint upon trade or commerce.*"

Your decision was predicated upon that finding that there was an utter absence of any intention whatever.

Passing to the next cases, the Stock Yards cases, which are, I think the main reliance of my learned friends, and which I will try to argue later more thoroughly; or, if I have not time it will be left to my brief, because I have tried to carefully analyze them—turning to the Hopkins and Anderson cases, the Court said, that where members of a purely local facility made a perfectly reasonable engagement between themselves for the due regulation of their business, and where there was no intent whatever to interfere with the free transit of cattle in and from Kansas City, that there, to quote the language of the Court,

> "where the undisputed facts clearly show that the *purpose* of the agreement was not to regulate, obstruct or restrain interstate commerce",

that such restraint was indirect and incidental, and not its purpose or object.

Then, passing from that case to the case of Smith vs. Alabama

(124 U. S., 465), which, while not a case under the Sherman anti-trust law, yet tends to throw light upon the subject, the Court said:

> "Where business agreements between parties engaged therein are entered into for the direct and *bona fide purpose* of properly regulating the conduct of that business",—

That they are not invalid, although "*indirectly and unintentionally*" they affect interstate commerce.

Again, in the case of Swift vs. United States, which is a most striking case, this Court said:

> "*Intent is almost essential to such a combination, and is essential to such an attempt.*"

There you distinguish the Stockyard cases by saying that the combination in those cases did not directly regulate commerce, and you added, "*being formed with a different intent, was not within the Act.*"

But the most striking of all the cases was a case, with which I had the honor to be connected in the Court below, the Northern Securities case. We at that time, who represented the Government, drew a bill, in which we averred a deliberate purpose through a device or scheme to restrain interstate commerce; and the answer denied it.

I remember very well that we were gravely in doubt, under the Joint Traffic and the Trans-Missouri cases, as to whether we needed any proof at all, because it seemed to us that the mere formation of this holding company carried with it the irresistible presumption of intent; but we went to proof, and probably it is fortunate that we did so. And when Mr. Justice HARLAN delivered the opinion of the Court he said—I do not mean that I am using the exact words—that the case was predicated upon the fact that the Circuit Court properly held that the proofs disclosed that there was this purpose and intent.

It was not put as specifically as that. What Mr. Justice

HARLAN said, as I recall it, was that the proofs satisfied the Court that the allegations of the bill had been sustained, and therefore not the traversing allegations of the answer.

Therefore, in the Northern Securities case, while your Honors never questioned the power of a number of men to buy stock, or to enjoy such right apart from the Federal government (nor did you question the power to form a corporation), yet, what you did say is that where such conduct was a means to an end, where it was a "scheme or device," to use your own language, whereby a purpose to restrain interstate commerce was to be carried into effect, that there the purpose invalidated conduct otherwise perfectly normal and legal.

MR. JUSTICE MOODY: Mr. Beck, in all the cases, is it not the fact that the particular kind of restraint of trade then before the Court was a restraint brought about by the suppression of competition that otherwise would exist?

MR. BECK: There are, of course, two cases brought like this under section 7 but they are collateral to the question of competition. I mean the case of Montague vs. Lowry, and the case of Chattanooga Foundry Company vs. City of Atlanta. In both of those cases damages were recovered because of enhancement of prices, although I am not so sure that in the case of Montague vs. Lowry there was any question as to enhancement of prices.

That case showed, as in this case, an absolute restriction on the power of any trader in California to buy tiles from any eastern manufacturer. It was a commercial boycott upon any dealer, not a member of the Tile Association, from buying his tiles from eastern manufacturers; just as here there is an embargo or prohibition upon every consignee in this country from purchasing his hats from this factory in Danbury, Connecticut.

MR. JUSTICE MOODY: Was it accompanied by an agreement upon prices?

MR. BECK: No; what happened in that case was that the eastern manufacturer would sell to a non-member at prices that were prohibitive, but to the members there were specified prices.

MR. JUSTICE MOODY: I want to make a suggestion to you, and then I will not interrupt you further.

MR. BECK: I am very glad to have you interrupt me.

MR. JUSTICE MOODY: I hope that at some time you will address yourself to this question, whether the Sherman law in the use of the words "restraint of trade" meant anything more than to describe that sort of combination, which had come, technically, to be known in the English law as "restraint of trade", or whether it intended to go farther and prohibit any combination which would obstruct or injure, or impair, or diminish trade. According as that question is decided, this case, possibly, might go.

MR. BECK: Perhaps I may address myself to it more at length hereafter; but let me give my momentary thought upon that question. First, the Joint Traffic and Trans-Missouri cases, as reinforced by the Northern Securities case, certainly indicate that the application of the Sherman anti-trust law was much broader than the prohibition of restraints of trade that were unlawful at common law. In other words, everything that checked the free flow of commerce between the States was prohibited by the Act.

That, I think, is the doctrine of this Court.* But apart from that, I again call your Honors' attention to the fact that I have

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* This Court said, in United States v. Trans-Missouri Freight Association, 166 U. S., 319:

> "While the statute prohibits all combinations in the form of trusts or otherwise, the limitation is not confined to that form alone. All combinations which are in restraint of trade or commerce are prohibited, *whether in the form of trusts, or in any other form whatever* (326). * * *
>
> "Contracts in restraint of trade have been known and spoken of for hundreds of years, both in England and in this country, and the term includes *all kinds of those restraints which, in fact, restrain or may restrain trade* (328). * * *
>
> "When, therefore, the body of an Act pronounces as illegal every combination or contract in restraint of trade or commerce among the several states, etc., the plain and ordinary meaning of such language is not limited to that kind of contract alone, which is in unreasonable restraint of trade, but all contracts are included in such language, and no exception or limitation can be added without placing in the Act that which has been omitted by Congress (328). * * *
>
> "But, assuming that agreements of this nature are not void at common law, and that the various cases cited by the learned courts below show it, the answer to the statement of their validity is to be found in the terms of the statute under consideration (334)."

already cited the decisions of the English Judges to the effect that to prevent a trader who wants to compete, from engaging in commerce is restraint of trade at common law. That, in other words, we are mistaken in assuming that the only restraints of trade known to the common law are those *voluntarily* imposed by one of two contracting parties upon himself.

MR. JUSTICE MOODY: I remember the Lord Eldon case very well, although I have forgotten the name of it. That was precisely the same agreement which was condemned by this Court in the Smith case—the same kind of an agreement for the maintenance of prices between dealers in fruit in London.

MR. BECK: But I cannot too insistently suggest, and I think I can give the reason in a moment, that the mere question of restricting competition, as it affects prices, is the apex of the pyramid. The free flow of commerce may have a much broader meaning as to the public welfare than any possible effect upon prices. It is a question of the fundamental liberty of a trader to engage in business.

Replying again to your Honor's suggestion, what did this Court say in the case of Montague vs. Lowry was the vice of the agreement? You said the vice was that "it narrowed the market for the sale of tiles in California"—I think I quote Mr. Justice PECKHAM'S words.

And why does not this combination in the case at bar narrow the market when, we will say, out of three possible competitors, if there were only three for the sale of hats in California, this body of men exclude by coercion and intimidation one willing competitor from his ability to engage in the sale of hats through his wholesale consignees in the State of California.

And so this Court said, in the Addyston pipe case:

> "Any agreement or combination which directly operates, not alone upon the manufacture but upon the sale, transportation and delivery of an article of interstate commerce, *by preventing or restricting its sale, thereby regulates interstate commerce.*"

It is absolutely essential to interstate commerce that there should be a right to dispose of the staples of commerce; and the power of the Federal government to protect the free flow of commerce does not cease until such product has been sold, or has become intermingled with the mass of property in the State of consignment; and therefore where you have, as in this case, a direct averment that these men purposely, avowedly and effectively went to the men, who they knew were our consignees, to whom we were under engagement to ship hats, and did in effect what a court of equity might not have done, enjoined these consignees from taking a hat from Connecticut except under the peril of commercial ruin, is not that a prevention of the sale of hats quite as effective, quite as detrimental to the free flow of commerce, as though the sovereign State of California had said: "None of Mr. Loewe's hats, manufactured in Danbury, shall be imported into the State of California, and there sold by either him or any of his consignees."

If California had passed such a law, it requires no argument that that law would not have been worth the paper it was written on. It would have violated both the Commerce clause and the Fourteenth Amendment. Even California could not prevent Mr. Loewe from bringing his hats into the State and selling them, if he ships them from Danbury, nor can it prevent a consignee from selling the hats. The power of the State would only begin when the hats were once sold and had been intermingled with the mass of property.

Therefore you have here practically an assertion of the power of a combination of individuals to do that which the sovereign State could not do, namely, to say to these consignees "You must not and you shall not sell a single hat." And, of course, the prohibition of the right of sale carries with it as an inevitable result the prohibition of the shipment.

The difficulty, as Judge PLATT saw it—and perhaps it would be fair to the Circuit Judge to see exactly the doubt that he had in the case; and it was not more than a doubt, because it is impossible to read Judge PLATT's opinion without finding that he had no very

strong convictions against us. He felt that it was a question of grave importance, as I think it is, as it affects the distribution of power between the Federal and State governments.

This is what he said :

> " There is no allegation which suggests that the means of transporting plaintiffs' product, or the product itself while being transported, were touched, handled, obstructed, or in any manner actually interfered with."

What does that mean ? It means that if we had shown that this American Federation of Labor had, at some intermediate point between Danbury and, we will say, San Francisco, physically held up the train that was carrying our hats by *vis major*, that in that case the combination was clearly a combination to restrain our trade ; but he doubted whether the far more subtle, but equally effective method of preventing the consignee from buying except under the peril that the thing that he buys would later become unsalable, was within the purview of the Sherman law.

I can only say upon that point, most emphatically, that if that view is to prevail, the freedom of interstate commerce, which this Government was brought into existence to protect, may become in the development of trade unionism in this country an illusion ; "ideal," as my learned brother, who represents the American Federation of Labor, says in his brief, his idea of interstate commerce is, that it is not a practical thing, although this Court says in the Swift case that it was a very practical thing, and not a mere legal abstraction.

The other suggestion of Judge PLATT was that there is no allegation that the defendants are in any way engaged in interstate commerce.

I have argued quite at length, and I am not going to speak of that, because if it in any way impresses the Court your Honors will see our views in our brief. It is wholly unimportant whether the members of the combination were engaged in interstate commerce or not. If they obstruct others from engaging in interstate commerce they are, as we think, clearly within the prohibition.

I was citing the cases where the contract had been held to be valid. I have referred to the Knight case and to the Stock Yards cases, and the other three cases are very briefly disposed of.

THE CHIEF JUSTICE: On what page of your brief do you refer to those cases?

MR. BECK: I have them written out. I do not know whether they are in my brief or not, but most of them are.

Bement vs. Harrow was the case of the licensee of a patent, and it was held not within the Sherman law on the ground that a patentee couldlicense the use of his own property, although it indirectly affected the interstate trade.

The Chicago Board of Trade vs. McChrystie was another case in which there was no intention or purpose to restrain interstate trade, and the Board of Trade was only safeguarding a property right which it was under no obligation to give the public the general use of.

The third case was the case of Cincinnati Packet Company vs. Bay, where a couple of steamship companies formed an agreement between two points within the same State, but in going between the two domestic ports it incidentally passed over territory of another State. This Court held that there was no intention to restrain interstate commerce, but that it was one of those indirect, collateral, unintentional and reasonable effects—

MR. JUSTICE MOODY: On this last question, if you will pardon me, is there any case, whether decided one way or the other, in which the allegation has not been made that the defendants themselves were engaged in the interstate commerce, and by their action restrained the commerce in which they were engaged? Is there any case that is not based upon that fundamental allegation?

MR. BECK: So far as the first part of your Honor's question is concerned, I think many of the conspirators in the Debs case were not themselves engaged in interstate commerce.

MR. JUSTICE MOODY: Certainly, but the question was left open in the Debs case.

MR. BECK: It was left open to the extent that the Supreme Court, while directly disclaiming any dissent from the holding of

the lower court that it was a case within the Sherman anti-trust law preferred to place its decision upon a broader ground.

MR. JUSTICE MOODY: But, apart from the Debs case, is there any other case, whether decided one way or the other, in which the allegation was not made that the defendants themselves were engaged in interstate commerce, and by their conduct violated the anti-trust law?

MR. BECK: I do not wish to answer the question too hastily. My impression is that there is not. At the same time, for the purposes of this argument, I have only referred to the cases decided by this Court; and as I will have a few minutes after recess, I will, in the interim, see if I am mistaken in the sweeping statement that in every case the members of the combination were engaged in interstate commerce.

Of course the defendants in the Northern Securities case were not directly engaged in interstate commerce. They were men who had bought stocks and exchanged their stocks for stocks in a holding corporation. Nevertheless, I do not want to quibble about it. In the sense in which Judge PLATT meant it, the defendants in the Northern Securities case were not engaged in interstate commerce, although they were engaged in acquiring the ownership of instrumentalities of commerce, which I think is practically the same thing, and I do not seek to distinguish the case on that ground.

I have already tried to show why I think the Knight case is wholly inapplicable, and I want to pass now to the case which I think will be the chief reliance of the defendants in error in this case, and that is the Stock Yard cases; and here I will ask your Honors' indulgence while I read the very carefully selected words of Mr. Justice PECKHAM—

MR. JUSTICE HARLAN: What case is that.

MR. BECK: This is the case of Anderson vs. The Kansas City Stock Yards.

Said Mr. Justice PECKHAM:

> "Where the subject matter of the agreement does not directly relate to and act upon and embrace interstate com-

merce, and where the undisputed facts clearly show that the purpose of the agreement was not to regulate, obstruct, or restrain that commerce, but that it was entered into with the object of properly and fairly regulating the transaction of the business, in which the parties to the agreement were engaged, such agreement will be upheld as not within the statute, where it can be seen that the character and terms of the agreement are well calculated to attain the purpose for which it was formed, and where the effect of its formation and enforcement upon interstate trade or commerce is in any event but indirect and incidental, and not its purpose or object."

And again, the Court said:

"We see nothing that can be said to affect the trade or commerce in question other than in the most roundabout and indirect manner. The agreement relates to the action of the associates themselves, and it places in effect no tax upon any instrument or subject of commerce; it exacts no license from parties engaged in the commercial pursuits, and prescribes no condition",—

Now, mark these words—

"and prescribes no condition, in accordance with which commerce in particular articles or between particular places is required to be conducted."

We have suggested in the brief that this opinion contains five different grounds of distinction between that case and the case at bar:

First, that in that case the Court held there was no purpose whatever to restrain interstate commerce. In this case the gist of the action, the gravamen, is our deliberate averment of a conspiracy, whose purpose and only purpose, whose effect and only effect, is to restrain our interstate commerce, and not merely to restrain it but to destroy it. And we have further averred that

this was no idle attempt, but that it actually did restrain and destroy our interstate trade.

MR. JUSTICE HOLMES: You are not stating it quite accurately, I think. Evidently one of the things that troubled the Judge, on the demurrer, was that their purpose was to destroy your trade generally, whether it happened to be interstate or not; that they did not care two straws whether it was interstate or local; and one of the things that troubled his mind was whether the general intent to destroy your trade was sufficient intent to interfere with interstate commerce, when some of your trade happened to be that.

MR. BECK: Your Honor will find when you read this complaint that if Judge Platt had that view, it was wholly erroneous, because there never was a complaint drawn with greater care to make the destruction of interstate trade perfectly clear. Of course Judge PLATT had the view, that is probably true, that the motive that underlay the main general conspiracy was a motive to destroy all our trade of whatever kind; but so far as this complaint is concerned, we have averred that nearly all our trade was interstate, that we were then engaged in the act of shipping to consignees in other States, that they knew that we had these unfilled orders, that they knew that our products were perishable in quality, and that they deliberately and not accidentally chose the destruction of our interstate trade, and that alone, as a means to compel us to unionize our factory. And therefore the suggestion that the restraint of our interstate trade is a mere incident of this case, is a wholly erroneous conception of the entire purpose of the combination. Therefore I think I am right in saying that in the Stock yards cases there was no purpose, and in this case the purpose shines out in almost every paragraph of the bill.

The second ground of distinction was this: That the combination was made in the Stock yards Cases with the object of regulating the conduct of a purely local business, and did not exceed its reasonable regulation.

I will not dwell at any length upon that, because it is unnecessary to remind the Court that you were very careful to consider that that was a mere local aid and facility of commerce, that it was

not really a part of the current of interstate commerce; that it was like the case of the Chicago Board of Trade dealing in stock quotations, it was secondary to commerce, it was a local facility governed by local rules, and those rules only the reasonable rules for the internal government of a purely local exchange.

Here there is no question of a local facility. There is an interstate trade from the Atlantic to the Pacific, that is not only restrained, but is actually destroyed. There is no theory about it. To quote Mr. Cleveland's famous language, it is a condition and not a theory of law that confronts Mr. Loewe. Unless the condition has changed, and of course the complaint says nothing about that, and I cannot speak about it—but unless there has been a change, this man's trade is absolutely destroyed between Connecticut and twenty other States.

The third ground of distinction is that the business must not be interstate commerce, but merely a local aid or facility. That is the same point.

The next distinction is, that the effect upon interstate commerce must be indirect and insignificant.

Is there anything indirect and insignificant if the consignees of Mr. Loewe are forced to say: "We cannot deal in your hats; we cancel our orders. Take back your goods. They are unsalable. They are as though they were infected by disease, as though the law had proclaimed them as unsalable as lottery tickets. We cannot sell them."

Is it possible that it can be said there is anything indirect or insignificant about that? I think not.

The next ground of distinction is that in the Stockyards cases your Honors said that to validate an agreement which indirectly affects interstate trade, it must be careful not to prescribe the conditions upon which interstate traffic may be conducted.

And your Honors took great pains, in the Stockyards cases, to say that there was no interference with the free flow of commerce; and everybody had a right to sell his cattle in Kansas City without respect to the arrangements of this local exchange. Your Honors said there was nothing to show that a single head of cattle

had been prevented from getting in or going out from the City of Kansas City.

But here the very opposite is the case. Here is a case where a self-constituted labor oligarchy sits in the City of Washington, and while knocking at the door of Congress insistently, from session to session, and asking it to abolish the writ of injunction, this oligarchy claims the right to issue an injunction prohibiting the transportation of any commodity it pleases from any State in this country to any other State, until the unhappy shipper or the unhappy consignee gets down on his knees and accedes to such demands, reasonable or unreasonable, as this labor oligarchy may choose to prescribe.

Therefore the very thing that your Honors were careful to say, that no combination may prescribe conditions, under which interstate trade may be permitted, and then excuse it because it is an indirect regulation, is here, because it is here averred that as to every hat manufacturer in this country, the American Federation of Labor has said, "You cannot engage in interstate commerce except on one condition, and that is to unionize your factory"; and as to seventy of them there has been a surrender to the terms, and as to twelve of them, so far as the bill shows, there has been, up to date, a refusal. And, as to one of them, the plaintiff, we have this arbitrary embargo upon his products, this writ of injunction, issued out of the High Court of Chancery of the American Federation of Labor, prohibing Mr. Loewe from manufacturing, from boxing, from shipping, and from selling his hats, and prohibiting every consignee from selling them as he receives them from Mr. Loewe, until they accede to such conditions as this self-constituted High Court of Chancery thinks proper to impose upon the conduct and management of interstate trade.

If that be not vesting in the American Federation of Labor the power, that has been heretofore supposed to be vested, to a plenary degree, in the Congress of the United States, namely, the power to regulate commerce among the several States, I fail to see how such power could be vested in any body of men.

(The Court thereupon took a recess until 2:30 o'clock, P. M.)

AFTER RECESS.

MR. BECK: If the Court please: In the time that remains to me, I propose to devote myself to discussing the two suggestions that were made from the bench by your Honors, Mr. Justice HOLMES and Mr. Justice MOODY. Undoubtedly Mr. Justice HOLMES is correct in assuming that Judge PLATT did view the scope of our complaint too narrowly. I think, therefore, it is of some importance that your Honors shall again know the essential averment of the complaint, so that when our learned antagonists address the Court and attempt to argue a proposition of law based upon an entirely different complaint (as it is obvious from their briefs that they intend to do), your Honors will see that they are not discussing the complaint in this case, but an entirely different one.

The essential averment of this complaint is all embodied in these few lines; and I want your Honors to observe how exclusively the allegations are restricted to a direct obstruction of interstate traffic. We aver that they entered into this conspiracy and combination,

> "to restrain the plaintiffs and their customers in States other than Connecticut in carrying on said trade and commerce among the several States, and to wholly prevent them from engaging in and carrying on said trade and commerce between them, and to prevent the plaintiffs from selling their hats to wholesale dealers and purchasers in said States other than Connecticut, and to prevent said dealers and customers in said other States from buying the same, and to prevent the plaintiffs from obtaining orders for their hats from such customers and filling the same, and shipping said hats to said customers in said States as aforesaid, and thereby injure the plaintiffs in their property and business and to render unsalable the product and output of their said factory, so the subject of interstate commerce," etc.

There is no suggestion there of a general boycott upon all our business; and when you couple that with the other allegation of

the complaint, that the portion of our business which was intrastate was a negligible one in amount, you then have presented to you a case where a man, so far as the sale of his product was concerned, was almost exclusively engaged in interstate commerce—a fact this complaint avers the defendants well knew, and that it was the destruction of such interstate trade, at which the defendants deliberately aimed.

While the question is now before the Court in a much broader aspect than upon the statement of facts contained in the certificate for instructions, yet the Circuit Court of Appeals obviously had no misapprehension of the purposes and character of the allegations of this complaint; because they have put the question very broadly. They have said that " the defendants, over two hundred in number, are all residents of Connecticut," etc.

> " In or about the month of March, 1901, and at divers other times subsequent thereto the defendants engaged in a combination or conspiracy to prevent or reduce the purchases by persons in other States of hats manufactured by the plaintiff. In pursuance thereof, defendants caused notifications oral, written and printed to be made to customers of plaintiffs in States other than Connecticut, and caused advertisements to be made in newspapers, by such notifications and advertisements informing said customers that unless they should refrain and desist from buying the plaintiffs' hats they would be placed upon the ' unfair list ' of the American Federation of Labor and that, while they continued to purchase such hats, the patronage of ' Union men ' would be withdrawn from them, and all friends of organized labor would refuse to buy any goods of whatever kind which might be dealt in by such customers.
>
> " In consequence of the threats thus made very many of the customers of plaintiffs in States other than Connecticut ceased buying the plaintiffs hats, which they would otherwise have bought from them, and as the necessary result thereof, the sales of large quantities of hats made by plaintiffs to

customers in States other than Connecticut ceased, and shipment of such hats from Connecticut to other States was to that extent restrained."

Such is the construction put by the Circuit Court of Appeals upon the complaint. But of course we suggest that the effect of the action of this Court in requiring the entire record to be brought up is to make the complaint its own justification or lack of justification for its sufficiency.

Coming now to the question suggested by his Honor, Mr. Justice MOODY.

Taking the Supreme Court case, alone, I find no cases in which the defendants were not themselves engaged in interstate commerce. Of the decisions in the lower federal courts there is one that, I think, is to the contrary ; and that was the very first case ever decided under the Sherman anti-trust law, in which a labor combination was in dispute. That is the case of United States v. Workingmen's Amalgamated Council of New Orleans, reported in 54th Federal Reporter.

In that case, as here, there was a great labor controversy in the City of New Orleans ; and the central labor organization declared a boycott, the purpose of which was, as the Court says, to create an absolute stagnancy of trade flowing in and flowing out of the City of New Orleans. The immediate cause of the strike was, as I recall it, a strike by draymen. The question in that case was, did this Act apply only to combinations of capital or of business-men who attempt to restrict their own liberty to compete; or does it apply to any combination of men, whether they themselves are engaged in interstate trade or not, who deliberately attempt to cause a stagnation, in what Mr. Justice HOLMES has called in Swift vs. U. S. when typically recurring, "a current of commerce"? And the Court answered that question by saying that the Act did apply. And inasmuch as it is the only case, in which the precise question raised by Mr. Justice MOODY has come up, perhaps I may be permitted to read the reasoning of the Court.

The Court said that here was a gigantic—

Mr. Justice White: Who is the opinion by? Whose opinion is it that you are reading?

Mr. Beck: It is an opinion of the Circuit Court of Louisiana.

Mr. Justice White: Do you remember whose opinion it is?

Mr. Beck: Judge Billings'.

In that case the bill averred the existence of "a gigantic and widespread combination of the members of a multitude of separate organizations for the purpose of restraining the commerce among the several States". The Judge said, in answer to the suggestion that labor leaders were not within this law:

> "I think the Congressional debates show that the statute had its origin in the evils of massed capital; but, when the Congress came to formulating the prohibition which is the yardstick for measuring the complainant's right to the injunction, it expressed it in these words:"

And then he quotes the sweeping language of the Act.

> "The subject had so broadened in the minds of the legislators that the source of the evil was not regarded as material, and the evil in its entirety is dealt with. They made the interdiction include combinations of labor, as well as of capital; in fact, all combinations in restraint of commerce, without reference to the character of the persons who entered into them. It is true this statute has not been much expounded by judges, but, as it seems to me, its meaning, as far as relates to the sort of combinations to which it is to apply, is manifest, and that it includes combinations which are composed of laborers acting in the interest of laborers."

And then the Court added:

> "It is the successful effort of the combination of the defendants to intimidate and overawe others who were at work in conducting or carrying on the commerce of the country, in which the court finds their error and their violation of

> the statute. One of the intended results of their combined action was the stagnation of all the commerce which flowed through New Orleans. This intent and combined action are none the less unlawful because they included in their scope the paralysis of all other business within the city as well."

My colleague reminds me that this case was appealed to the Circuit Court of Appeals for the circuit in which Louisiana was, and affirmed by that Court as being "clearly within the statute." That, as I recall it, was the language of the Circuit Court of Appeals.

Judge BILLINGS was entirely warranted in his statement that the idea as to the sweeping prohibition of all combinations did broaden in the minds of Congress, for the reason that the debates show clearly that the very result of the doctrine, as announced by Judge BILLINGS, and as contended for in this case by us, was fully anticipated by at least some members of Congress; and they moreover show that Congress has deliberately refused, by any subsequent amendment, to put in any disclaimer of any intention to apply the Act to combinations of laborers not themselves engaged in interstate commerce.

I want very briefly to show that this is so; because, as the doubt has been raised, the legislative history of the Act may not be uninteresting.

When the Act was originally introduced, the proposed legislation received little serious consideration until March 21, 1890, although introduced in 1888. In the course of the debate, attention was repeatedly called to the application of this sweeping prohibition to labor organizations. Senator Teller said:

> "I believe this bill will go further than that; I believe it will interfere with the Knights of Labor as an organization."

That was, at the time, the great labor organization of the country. Senator Hiscock said:

"And it would practically include all the trades unions."

Realizing that the bill would apply to labor combinations, Senator Sherman, on March 25, 1890, offered the following amendment:

> "Provided, That this Act shall not be construed to apply to any arrangements, agreements or combinations between laborers, made with a view of lessening the number of hours of labor or of increasing their wages, nor to any arrangements, agreements or combinations among persons engaged in horticulture or agriculture."

That amendment was adopted. But subsequently, on March 27, 1890, the bill, as amended, was recommitted to the Senate Committee on Judiciary, which on April 2, 1890, reported a substitute bill, which wholly omitted the amendment making laboring people and farmers a privileged class in the community. And I have cited in my brief bills introduced in the Fifty-second, Fifty-fifth, Fifty-sixth and Fifty-seventh Congresses, giving them by title number, in each of which an attempt was made by amendment to read into the Sherman anti-trust law an exemption of labor combinations; and in each case Congress failed to pass the bill.

We, therefore, have a bill which, if it requires construction, says what? That

> "*every* contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, * * * is hereby declared to be illegal."

And then follows:

> "*Every* person who shall make any such contract or engage in any such combination"

shall be punished.

And then comes Section 7, under which this suit is brought:

> "Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this Act,"

not

> "any other person or corporation engaged in interstate commerce",

but

> "any person * * * injured * * * by any other person * * * by reason of anything forbidden * * * by this Act"

shall be given this personal remedy.

Therefore the Act presents itself to your Honors with words as sweeping as the English language can make them, judicially interpreted by this Court in the Joint Traffic and Trans-Missouri and the Northern Securities cases as including *every* combination, whose object is to directly restrain interstate trade, and only excepting those which have no such object, and whose effect is only incidental and insignificant. You have, I say, that coupled with the legislative history of the bill, showing that Congress (to their praise be it said) refused, out of any passing spirit of demagoguery, to create an exemption for a privileged class in the community, which would give them the power to regulate commerce by regulating the conditions under which it should be conducted—a right denied to everybody else.

The sum and substance of the whole matter is this: The Constitution gave to Congress plenary power over interstate commerce. Is not the manifest purpose of the Sherman anti-trust law to empty into that reservoir (if I may use the term) all the power of Congress with respect to interstate commerce so far as the freedom of its flow is

concerned? Was it not the intention of Congress, as shown by this language, to say that while in the absence of any Congressional declaration the rule should be the rule of the common-law, that trade should be free; yet as to interstate trade, that Congress declared in language as sweeping as it could possibly command that this flow of commerce should be absolutely unrestrained by any combination or conspiracy that would dam it up, or obstruct it, or restrain it? And having done that in such sweeping language, where would be the warrant of this Court, in the teeth of the Act of Congress, declining to do so, or in reading into the law an exception—an exception which would be discordant with the very institutions of our country; an exception that would create a privileged class of wrong-doers, giving to them a right which is denied to every other class?

I only want to say in conclusion, before committing to the Court what I believe to be a case of very great importance, that this question affects not merely the manufacturers of the country, although they are vitally concerned in this irrepressible conflict to manage their own factories as they see fit; it not only concerns the consumers, whose power of consumption is necessarily affected by any artificial restriction of competition or of the free flow of commerce; but above all it affects the laboring men, who are not members of these trades-unions, and to protect whose rights to sell the product of their hands Mr. Loewe took what, I think, was a courageous stand in this case, in facing what seemed to be inevitable ruin rather than submit to the arbitrary and offensive demands of men, who had no interest in his business, who had not invested a dollar in it, who were not his employes, who enjoyed no contractual relation with him, and who yet assumed a power, which even the sovereign States of the Union themselves do not possess, of stating to Mr. Loewe: "Upon these terms, and upon none other, shall you have the right to engage in interstate commerce"—because, in the last analysis, this case must come to that.

I want to say, before concluding, that we have no quarrel with labor organizations; and if the suggestion is made that on our

theory of the case the mere existence of a labor organization is a restraint of interstate trade, we disclaim such an idea. Labor organizations are most beneficial; and it would be an infinite pity if in any way they were prevented, or indeed if they could be prevented, conformably to our institutions. Indeed, we do not even speak harshly of many of the errors of labor organizations; because, having due regard to all the conditions of labor, and to other considerations too obvious to be mentioned, I think the attitude of every tolerant and broad-minded man must be to labor organizations, the spirit which was voiced by Edmund Burke when he said:

"You must pardon something to the spirit of liberty."

While it is a perverted kind of liberty that labor people sometimes try to enforce upon other laboring men, yet, after all, much must be pardoned and tolerated in what they do.

Therefore it is not our contention before this Court that the mere organization of a labor combination is in itself a restraint of commerce. But what we do contend is that when, as here, a labor organization deliberately forms a conspiracy, not merely to restrain but to destroy interstate trade, when it employs means that are effectual for that purpose, when it puts those means into execution, and when it actually does destroy interstate trade to a very appreciable degree, and does so under the pretence of dictating the terms and the only terms under which we may exercise the constitutional right of every American citizen to engage in interstate commerce, that then it has offended the Sherman anti-trust law; and that all courts, and most especially this great tribunal, whose voice in this matter will carry so much weight and authority, should without hesitation so declare.

I thank your Honors for your patient attention.

Closing Argument of Daniel Davenport, Esq., on Behalf of the Plaintiffs in Error.

MR. DAVENPORT: May it please the Court.

I came down here from Connecticut to argue this case, and not some other one, because it is this case and not some other one that this Court has to decide.

Now, of course the important thing and the only thing before this Court is, are the facts alleged in the complaint a sufficient statement of a cause of action under the seventh section of the Sherman Anti-trust Act.

Of course the office of a complaint is to set up the facts. You are allowed to set them up, in order that you may prove them; and we have alleged these facts because we can prove them. I did not know yesterday but that I detected a sort of suspicion in the mind of one of the Justices that perhaps this was an astute, crafty mode of stating something in order to get it within the jurisdiction of the Federal Court. Let me say, if it is necessary to say it,—for I drew this complaint and every line of it—that every allegation of fact in that complaint is susceptible of the most complete demonstration and proof by evidence furnished by the defendants themselves.

THE CHIEF JUSTICE: That is to be assumed, is it not?

MR. DAVENPORT: Oh, certainly.

THE CHIEF JUSTICE: This case comes here directly on the demurrer to the complaint.

MR. DAVENPORT: Yes, your Honor.

THE CHIEF JUSTICE: And it is tested by that. The certificate is all done away with.

MR. DAVENPORT: Oh, yes, your Honor. So that, as I apprehend, the matter of concern to the Justices of this Court is, what are the facts alleged and admitted in this case? What are the allegations of this complaint?

In the first place, I want to call your Honors' attention to this allegation:

"The defendants"—

And their confederates—

" Have been for many years, and now are, engaged in a combined scheme and effort to force all manufacturers of fur hats "—

I suppose it is known to the Court that fur hats mean those made from rabbit fur, and not from wool or straw hats—derbies and soft hats—

" To force all manufacturers of fur hats in the United States, including the plaintiffs, against their will and their previous policy of carrying on their business, to unionize their shops, with the intent thereby to control the employment of labor in and the operation of said factories and to subject the same to the direction and control of persons other than the owners of the same * * * and to carry out such scheme, effort and purpose, by restraining and destroying the interstate trade and commerce of such manufacturers by means of intimidation of and threats made to such manufacturers and their customers in the several States, of boycotting them, their product and their customers, using therefor all the powerful means at their command as aforesaid, until such time as from the damage and loss of business resulting therefrom, the said manufacturers should yield to the said demand to unionize their factories."

Now, that allegation is made; it is an allegation of fact; and it is admitted that they have combined together to force all manusacturers of fur hats in the United States, now and in the future, to unionize their factories, by means of the destruction of their interstate trade.

MR. JUSTICE MOODY: Right there, suppose the Federation of Labor, taking, for instance, the question of child labor which Mr. Beach used as an illustration, pursued exactly the same method with regard to that subject, and said to the manufacturers: "You must not employ children under the age of thirteen years."

MR. DAVENPORT: It is exactly the same principle.

MR. JUSTICE MOODY: It would be precisely the same principle.

MR. DAVENPORT: Exactly. The motive makes no difference; but what I am talking about here is what are the allegations of the complaint, and what is admitted.

We stand here, then, with the frank admission by the defendants that they are engaged in a combination to restrain and destroy this trade, with that ulterior object in view.

What other facts are alleged and admitted? I call your attention to the paragraph which reads as follows:

> "About July 25th, 1902, the defendants, in pursuance of their said general scheme and purpose, wrongfully and in violation of the Sherman Anti-trust Act, and with intent to injure the property and business of the plaintiffs by means of acts done and declared to be unlawful, entered into a combination and conspiracy to restrain the plaintiffs and their customers in States other than Connecticut, in carrying on said trade and commerce among the several States"—

That is alleged and admitted; and if denied, it would be proven.

> "And to wholly prevent them from engaging in and carrying on said trade and commerce between them, and to prevent the plaintiffs from selling their hats to wholesale dealers and purchasers in said States other than Connecticut"—

And, on the other hand, to prevent the dealers in other States from buying goods from the plaintiff, a seller of hats in Connecticut. That is admitted.

> "And to prevent the plaintiffs from obtaining orders for their hats from such customers and filling the same, and shipping said hats to said customers in said States as aforesaid, and thereby injure the plaintiffs in their property and business"—

That is admitted, that they entered into a combination to do that—

> "And to render unsalable the product and output of their said factory, so the subject of interstate commerce, in whosoever's hands the same might be or come, through said interstate trade and commerce"—

Now, that is admitted—

> "And to employ as means to carry out said combination and conspiracy and the purposes thereof, and accomplish the same, the following measures and acts, viz."

When I got so far I put it under a videlicet, because I did not know but possibly we might break down on one of the means, and if they knocked us off of one limb, we grabbed for the next. So I stated it in this form. These are all means to carrying out the purpose, which they admit they contrived to do. Now, observe the phraseology:

That they entered into this combination, "to employ as means to carry out said combination and conspiracy and the purposes thereof, and accomplish the same, the following" means.

Now, what are those means? Here was this concern with its orders, right in the busy season. The hat business, of course, goes by the season. It was right in its busy season, with orders unfilled, and filling orders, and a blow is struck. What is it? Is it a strike, such as the gentleman talks about? It is the compulsory driving out of that factory of every employe but ten, and the scheme was to drive them all out. The Union men were forced to go out, and the non-union men were driven out by coercion, and there the business, at the end of its production, designed to carry out and necessary to carry out its business, was struck a blow the same as if the building had that day been burned down, and so it continued for months.

That is one means. Now, just like a pair of shears, with the blades coming together, what did the other end of it do? Having done this, to "thereby cripple the operation of the plaintiff's factory, and to prevent the plaintiffs from filling a large number of orders then on hand", etc., "as was well known to the defendants; in connection therewith"—

Not separately; not as an incident, but as a means, maliciously, ingeniously and effectively designed to accomplish this purpose—

> "To declare a boycott against all hats made for sale and sold and delivered, or to be sold and delivered, by the

plaintiffs to said wholesale dealers in States other than Connecticut, and to actively boycott the same and the business of those who should deal them, in and thereby prevent the sale of the same by those, in whose hands they might be or come through said interstate trade in said several States."

That is only one means. Another is—

"To procure and cause others of said combination, united with them in said American Federation of Labor, in like manner to declare a boycott against and to actively boycott the same"—

That is, these goods—

"And the business of such wholesale dealers as should buy or sell them, and of those who should purchase them from such wholesale dealers; to intimidate such wholesale dealers from purchasing or dealing in the hats of the plaintiffs by informing them that the American Federation of Labor had declared a boycott against the product of the plaintiffs and against any dealer who should handle it, and that the same was to be actively pressed against them, and by distributing circulars," etc.

Now, then, what was another means? Is it said that these means are not tainted by the illegality of the combination? Why, what said Mr. Justice HOLMES in the case of Aikens vs. Wisconsin: A most innocent act, if a step in a plot, and that plot is an illegal combination, becomes itself tainted with it, and any act done to carry out that plot that results in damage to any party is actionable by the party who receives it.

"To threaten with a boycott those customers who should buy any goods whatever, even though union made, of such boycotted dealers, and at the same time"—

Now, here is a peculiar allegation—

> "To notify such wholesale dealers that they were at liberty to deal in the hats of any other non-union manufacturer of similar quality to those made by the plaintiffs, but must not deal in the hats made by the plaintiffs under threats of such boycotting."

Now, of course, there will run through your Honors' minds the fact that every one of these means is admitted to have been used in the combination, for the purpose of accomplishing it, and they stand bound by it before this Court.

> "To falsely represent to said wholesale dealers and their customers that the plaintiffs had discriminated", etc.—

Malicious representations about the matter, which has always, of course, been actionable; trying to deprive a man of trade by lying about it—

And, "To use the said union label."

I want to come to this: It was alleged previously in this complaint that this vast organization of men, comprising—is it 1,400,000 adults?

MR. BECK: 1,400,000.

MR. DAVENPORT: 1,400,000 adults. As my brother Beck suggests, an army three times as large as that with which Napoleon crossed the Niemen. I believe he had about half a million fighting men, and as many supernumeraries, and 500,000 beasts, oxen, cattle and horses—as I say, it has been alleged that that vast army employs more than 1,000 emissaries to go through the country assassinating the business of anybody who does not see fit to accede to their demands.

> "And in connection with the boycotting * * * to employ a large number of agents to visit said wholesale dealers and their customers, at their several places of business, and threaten them with loss of business if they should buy

or handle the hats of the plaintiffs, and thereby prevent them from buying said hats,"—

And if they should buy—

"And in connection therewith to cause said dealers to be waited upon by committees representing large combinations of persons in their several localities to make similar threats to them; to use the daily press," etc.

I say, we allege and they admit that they formed this combination to prevent the plaintiffs from selling, and the others from buying, by the use of these means. That is admitted.

The next thing that is admitted is that having formed that combination to use those means, another whole paragraph is taken up with stating that they did use those identical means which they had contrived, and another paragraph states that by reason of these unlawful acts done in carrying out this conspiracy, which is declared, as we claim, to be unlawful by the Sherman anti-trust act, the plaintiff was damaged in his business and property in the sum of $80,000.

That is the case as stated in the complaint, and that is the case of the allegations which are admitted.

Now I would inquire of my friend what there is for this court to pass upon, on that state of facts. The Sherman anti-trust act says that every contract, every combination in the form of trust or otherwise, and every conspiracy in restraint of trade between the States or with foreign nations or here in the District of Columbia or in the territories is illegal; and it is also made criminal for any person to engage in it. That is what that Act says.

What is the sum and substance of all the decisions of this Court? When I sat down to draw that complaint in August, 1903, I had before me the Knight case, and these three cases in 171 U. S., the trans-Missouri traffic case in 166 U. S., the Hopkins and Anderson cases—

MR. BECK: And the Addyston case.

MR. DAVENPORT: The Addyston case was in 175; but in 171 I had these two Stock Yard cases and the Joint Traffic Association case; and that is all the light we had. But what did I learn when I took down that statute, and took down the decisions of this Court? What was the net result of all the argument and discussion that has been had before this bar, and among your Honors' decisions? Simply this, that the Sherman anti-trust act means exactly what it says. When it says *every* contract, it does not mean *some* contracts. It means all contracts. When it says *every* combination it means not some, but all, not only in the form of trust, but otherwise; and it says "every conspiracy". It must have occurred to everybody who read that statute; suppose you cut out the word "contract," what would be the effect of it? Suppose you cut out the word "combination"; suppose that in the rage to amend that Act that seems to be arising, you cut out the word "contract." Suppose you cut out the words "contract" and "combination" and leave the word "conspiracy." It does not seem possible that people could be ever induced to repeal that Act to the extent of making lawful conspiracies in restraint of interstate trade. But suppose it was done. This Court has said over and over again, and there is no dispute between the majority and minority in any previous case upon that subject, any longer, that it means every combination, every conspiracy that directly restrains interstate trade.

No better summing up of the matter can be found than in the language of Mr. Justice PECKHAM, who has written so many of the opinions in these cases, and, as brother Beck read it, I would like to read it:

> "As has frequently been said, interstate commerce consists of intercourse and traffic between the citizens or inhabitants of different States, and includes not only the transportation of persons and property and the navigation of public waters for that purpose, but also the purchase, sale and exchange of commodities."

Citing two cases.

> "If, therefore, an agreement or combination directly restrains not alone the manufacture"—

Which, of course, was the matter in the Knight case—

> "But the purchase, sale or exchange of the manufactured commodity among the several States, it is but within the provisions of the statutes. The power to regulate such commerce, that is, the power to prescribe the rules by which it shall be governed, is vested in Congress, when Congress has enacted a statute such as the one in question, any agreement or combination *which directly operates not alone upon the manufacture but upon the sale, transportation and delivery of an article of interstate commerce by preventing or restricting its sales,*"

Which was, of course, the case then before the Court—

> "thereby regulates interstate commerce to that extent and to the same extent trenches upon the power of the national legislature and violates the statute. We think it plain that this contract or combination effects that result."

That is the language of Mr. Justice PECKHAM in the Addyston Pipe case, in 175 U. S.

It is all idle to talk about what may be and what may not be a case. What have they admitted? Is it not a question of fact whether a combination was formed? They have admitted it is. Is it not a question of fact whether it was formed for the purpose of directly restraining interstate trade? Of course it is. Is it not a question of fact whether the trade attacked was interstate? Of course it is, and it is admitted. Is it not a question of fact whether they contrived to use and employ the means alleged? Of course it is. Is it not a question of fact whether they did employ them? Of course it is. Is it not a question of fact whether the employment of those

means injured the property or business of the plaintiff? Of course it is, and all are admitted.

Now, what is there left for this Court to pass upon under the allegations of this complaint? The gentleman thinks terrible results will happen if the power of this government is sufficient to control a combination like this. Why, this Court has held that if a couple of butchers here, on opposite corners of Pennsylvania Avenue, get together for the purpose of fixing prices, and maintaining them, and agreeing not to compete, they are within the provisions of this Act; that if a couple of railway clerks get together to fix rates between two railroads in any transaction, agreeing to maintain them, that that is prohibited; that if a couple of manufacturers get together and say "We will parcel out the country, and we will not compete together," that is prohibited. The court has already held that.

MR. JUSTICE MOODY: I should like to know in what cases any of those things have been held.

MR. DAVENPORT: Must I repeat the decisions of the Court?

MR. JUSTICE MOODY: No; tell me the cases, and I will look it up myself.

MR. DAVENPORT: In the first case, where I referred to the butchers, I refer you to the Beef Trust case. That is the case your Honor argued, I believe, as Attorney-General, and I should have liked to include much of your argument in our brief, if it had not seemed to be plagiarism.

The question about the railway clerks, is the Trans-Missouri Traffic Association case, and the Traffic Association case in New York.

The question about the manufacturers, or the authority in regard to the manufacturers, is the Addyston Pipe case; and the Montague and Lowry case. If your Honor will read those, I think you will find that the statement I make is true, that this Court has declared as I have stated.

Now, I want to know what is going to happen that is so terrible, if the power of this Court is found sufficient to control the unlawful

conduct, as we claim, the malicious and injurious conduct of an organization like this.

My friend, Mr. Beck, used a very happy expression yesterday, I thought, when he spoke of emptying the whole power this nation possessed, vested in Congress by that little phrase "shall have power to regulate commerce." Language cannot be devised which will confer more power over that subject upon Congress than it has. To use the language he used, the Nation has emptied itself into that constitutional provision. And similarly, whatever power Congress has over this matter is, by the language of this Act, put into it. No language more comprehensive and more sweeping could be thought of, and the whole power of this Nation is embodied in that Statute. You could amend the Constitution, you could change it; but you could not make it any more comprehensive.

Now, if it be that a combination, such as is described, here is not covered by that, then it follows necessarily, it seems to me, that there is no power in this Government or power in this Nation, to control and stop these acts. And if it be true, as we see stated in the papers, that the Labor Union has come to stay, and these things are to be allowed to be done by them, all I have to say is that in my judgment American institutions cannot long stay; because who ever conceived of a tyranny so great as that which can be brought to bear upon one poor manufacturer and his poor customers, who owe their notes and have their business to attend to,—of bringing to bear in the most scientific manner, the whole power of two million people to crush and destroy them?

Now, I submit that the simply question here for the learned Court to pass upon, is whether the facts alleged and which are admitted as they are alleged, raise or state a claim as provided in the seventh section of the Sherman Anti-Trust Act.

I want to say another word. I am very proud of this complaint because I drew it, and it took me a month to draw it. I claim there is more thought, there is more pains in that single complaint than in any similar document in the English language—unless it be Grey's

Elegy in a Country Church Yard, which they say took him seven years to write.

I had all these facts before me. I had a mountain of proof. I had those cases. I found this fact to be true, that this poor manufacturer, whether luckily or unluckily, had only a little business of $10,000 in Connecticut. I found that he had over $400,000 in other States. I found that these gentlemen, by their statements, were directing their forces against interstate trade of all these manufacturers; and then I sat down to draw it, and I put in these facts.

My friend in his hasty summary statement of this complaint yesterday, rather stated that the first nineteen paragraphs of this complaint—well, that they were not essential, that they were just leading up to the rest. Of course he did not mean to be understood in that sense; but the fact is that there cannot be found, when you get to understand the complaint and the case, a single superfluous allegation in that complaint.

There is one word, though, which has offended mortally my friends, and that is in the fourth paragraph, where we speak of the word "patriotic". We say that Loewe pursued a "patriotic" course. My friends were so indignant about it that they actually went to Judge PLATT and asked him to strike the word "patriotic" out of the complaint; but we said to him: "That is the nub of the whole thing, this question of patriotism. It is not a question of 'Join the union and get your wages raised', but a question of whether the opportunities of this country shall be kept open to everybody", and his Honor said "Well, I guess I will let it stay", and it remained.

Now, these gentlemen say "Why, you do not own any interstate commerce." My friend Spelling here says "Why, interstate commerce is an abstract and ideal thing; you do not own any of it, and therefore you cannot bring any action here for protection"; and brother Beach has refined away on this thing until he has got the notion that if a man loses his trade, which he has formerly received

by dealings with people in other States, that interstate trade is not diminished or affected.

We take a very different view of this statute than that. We do not say whether we own or do not own interstate commerce. We say it is a fact that we have a right to engage in interstate commerce, and that the Congress of the United States has a right to declare that we shall be free to do it, and that they can make any combination to restrain it unlawful, and that when they have made it unlawful, every act done to carry out that combination is, itself, unlawful, and partakes of the unlawful character of the combination.

Brother Light, in opening the case said: Suppose it was this kind of a combination—(if I understood him)—suppose these people, in order to destroy this interstate trade, and for the purpose, had conspired together to burn the factory of the plaintiff, and to burn the stores of the customers, and threatened to burn the rest, for the purpose of destroying it; would anybody contend that that was a combination in restraint of trade? And the suggestion was made here yesterday that if a lot of people combined to destroy interstate trade, and to prevent it, by burning a railway bridge, that that was something that was so novel that it was untenable.

In point of fact this statute does not make any distinction as to the means any more than it does as to persons. Given a combination, all this Court could possibly say would be that the means are not adequate to accomplish it; and there again comes the language of Mr. Justice HOLMES in the Swift case: As to this combination, if entertained, (as under this demurrer we must, of course, assume it is) we cannot say that the means alleged to carry it out are not sufficient and adapted to accomplish it.

But here it is alleged and admitted that they were sufficient.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1907.

No. 389.

DIETRICH LOEWE ET AL.

vs.

MARTIN LAWLOR ET AL.

Appeal from the United States Circuit Court of Appeals, Second District.

Petition of the American Federation of Labor, a Voluntary Association, Samuel Gompers, and Frank Morrison, for Leave to Intervene and be Heard on the Side of the Defendants in Error.

To the Supreme Court of the United States:

Your petitioners, the American Federation of Labor, Samuel Gompers, and Frank Morrison, mentioned in the complaint herein, respectfully show:

That said American Federation of Labor is a voluntary association heretofore organized and having an office and place of business at the City of Washington in the District of Columbia; that it has a constitution heretofore regularly adopted and a membership consisting of many other voluntary associations; that the said Samuel Gompers mentioned in the complaint as "the chief agent" of your petitioner, is its president and chief executive officer, and said Frank Morrison is its secretary; that the said The United

Hatters of North America mentioned in said complaint is one of the voluntary associations constituting said membership; that petitioners are financially and otherwise interested in the decision of the above entitled case, and that a decision herein in favor of the plaintiff in error would seriously obstruct and hinder the said American Federation of Labor, petitioner, in carrying out the purposes for which it was organized and destroy, at least to some extent, its usefulness to its members, and would likewise and in like manner injure said members.

Wherefore your petitioners respectfully pray that they may be permitted to file a brief and be heard on the side of the defendants in error herein, and for such other relief as to the court may seem proper.

And in amplification of this petition, your petitioners respectfully represent the following facts:

First. That the constitution of said American Federation of Labor, petitioner, makes special provision for the prosecution of boycotts, so called, when instituted by a constituent or affiliated organization as is described in the complaint filed in the District court by the plaintiff in error herein, through the agency and pursuant to the approval of the Executive Council of petitioner; but that what are alleged in said complaint to be boycotts are in reality legal and proper proceedings set on foot and carried on in order to accomplish lawful ends of your petitioner and of said affiliated or constituent associations.

Second. That under the provisions of said constitution many so-called boycotts have been and several are now being prosecuted by petitioner pursuant to approval of its said Executive Council.

Third. That all said so-called boycotts were, and those now being prosecuted are so prosecuted in good faith in the belief and with an understanding that to do so was

and is the exercise of a right and privilege fully guaranteed and protected by constitutions and laws, and that in approving and prosecuting them your petitioners incurred no legal liability to any person, firm, or corporation.

Fourth. That the said Samuel Gompers and Frank Morrison are parties defendants in other actions involving, among others, the same issue that is involved in this case; and hereunder they specify that they with other defendants who are also defendants in this case are co-defendants in an action now pending in the Superior Court of Fairfield County, State of Connecticut, in which the plaintiffs are the plaintiffs in this case, the issues being the same.

Fifth, and finally, that your petitioners are financially and otherwise interested in having a full, fair, and thorough hearing and adjudication of the legal issues involved herein by the Supreme Court of the United States, and in this connection allege that they verily believe that the issues involved will be more clearly presented and fully considered if they be permitted to intervene and be heard on the side of defendants in error and to submit a brief to the court.

Wherefore, your petitioners pray for permission to file a brief herein on the side of the defendants in error in the above entitled case now pending in said Supreme Court of the United States on writ of error, and for such other relief as to the court may seem proper.

THE AMERICAN FEDERATION OF LABOR,
SAMUEL GOMPERS, and
FRANK MORRISON,
By T. C. SPELLING,
Attorney.

Office Supreme Court, U. S.
FILED
DEC 2 1907
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1907.

No. 389.

DIETRICH LOEWE ET AL.

vs.

MARTIN LAWLOR ET AL.

Brief of Thomas Carl Spelling on Behalf The American Federation of Labor, et al.

LAW REPORTER PRINTING CO., WASHINGTON, D. C.

Supreme Court of the United States.

OCTOBER TERM, 1907.

No. 389.

DIETRICH LOEWE ET AL.

vs.

MARTIN LAWLOR ET AL.

Brief of Thomas Carl Spelling on Behalf The American Federation of Labor, Samuel Gompers, and Frank Morrison Intervenors.

On a certificate from and writ of certiorari to the United States Circuit Court of Appeals for the second circuit.

Certificate filed July 11, 1907, certiorari and return filed October 21, 1907.

The complaint is profuse and voluminous as is also the demurrer. In pleasant contrast we have an opinion by the District judge which is brief, pointed, and concise.

1. It will be seen that while the plaintiffs allege in the complaint in general terms, injury to "property and business" (paragraph 8), and to "business and property" (paragraph 22), yet circumstantially and specifically they differentiate the portion of their business outside the State of Connecticut from that within that State, and intentionally and industriously show that they claim no damage for injury to the Connecticut portion, but only to that beyond that State; that is to say, to what they designate as plaintiffs' "interstate commerce." The term

is varied. Sometimes it is spoken of as plaintiffs' "interstate trade," "interstate business," etc.; but the intent to rely upon injury resulting from restricting or "narrowing" interstate commerce is fully expressed and is as obvious as any single feature of the case made by the pleading.

Now it is too well settled that the common law policy inimical to restraint of trade had no place in Federal jurisprudence prior to the enactment of the act of July 2, 1890, known as the anti-trust act, to require the citation of authority in support of the proposition; and one of the questions to be decided here—a question met at the very threshold of discussion—is, what is interstate commerce? And the answer—part of it at least—is, that it is an ideal thing, without form or substance, unconnected with any of its subjects, agencies, or instrumentalities. It is even distinct from the contracts which are made as a basis of interstate commerce. In short, the term is an abstraction, just as is the term "jurisprudence." We have this statute to protect interstate commerce from a certain species of interference, just as we have a statute to prevent obstruction of the administration of justice (Rev. Stat., secs. 5604 et seq.). Neither justice nor interstate commerce is susceptible of ownership or control by any individual. In a certain sense they both belong to the nation; but even here it would be more appropriate to say that they *pertain to* the nation or to all the people of the nation. Hence we see the germinal fallacy of the complainant in this case. The action is based on the untenable theory that plaintiffs own, or rightfully control, some part of interstate commerce, whereas, in fact and law, it is the very purpose of the statute under which the action is brought to forbid and prevent any such ownership or control, and for this reason plaintiffs' theory is self-destructive.

2. That the statute gives an action to those injured

by the agreements and combinations specified therein, and not otherwise, needs no argument. The things alleged to have been done by the defendants is not one of such agreements or combinations. The conduct of the defendants, however reprehensibly it may be viewed, has no direct or indirect tendency to restrain or even obstruct interstate commerce, if the foregoing definition or view of its true nature be correct. But I will not elaborate this head of argument, and will merely refer to the opinion of the learned District judge in this case in support of my contention hereunder (see Transcript, folio 43–47).

The idea which appears to have dominated the plaintiffs in the bringing of this action was that the extent and magnitude of the defendants' operations constituted an element to be considered in determining the quality of the alleged injury; but, upon like reasoning, it would be difficult to place a limit to the number of actions which might be brought under the act. The same theory would support an action by distillers of, and wholesale dealers in, intoxicating liquors, against temperance organizations whose efforts tend to reduce sales and diminish the volume of trade.

THE AMERICAN FEDERATION OF LABOR,
SAMUEL GOMPERS, and
FRANK MORRISON,
Intervenors.

By T. C. SPELLING,
Attorney.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 389.

DIETRICH LOEWE ET AL.

vs.

MARTIN LAWLOR ET AL.

ON A CERTIFICATE FROM AND WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE DEFENDANTS IN ERROR.

JOHN KIMBERLY BEACH,
JOHN H. LIGHT,
ROBERT DEFOREST,
HOWARD W. TAYLOR,
of Counsel.

C. G. Whaples & Co., Printers.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 389.

DIETRICH LOEWE ET AL.

vs.

MARTIN LAWLOR ET AL.

ON A CERTIFICATE FROM AND WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE DEFENDANTS IN ERROR.

The complaint alleges a combination to unionize the plaintiffs' factory, a boycott of the plaintiffs' customers in other states because of plaintiffs' refusal to unionize their factory, and the consequent diminution of plaintiffs' sales to such customers.

Paragraphs 1-6, inclusive, of the demurrer rest on the ground that the combinations stated in the complaint are

not with the Sherman Act, for the reasons set forth in said paragraphs, respectively, the broadest ground of demurrer being that set forth in Paragraph 1.

The Circuit Court for the District of Connecticut sustained the demurrer so far as Paragraphs 1-6 are concerned, which rendered it unnecessary to pass upon any other questions in the case; and upon the plaintiffs declining to amend the complaint the Court rendered judgment for the defendants. This writ of error was sued out of the Circuit Court of Appeals for the Second Circuit, which then certified to this Court, upon a brief statement of facts, the question whether upon such statement the plaintiffs had a cause of action under the Sherman Act. Thereupon the plaintiffs and defendants in error joining in the request, this Court ordered the whole record brought up, and under the statute it now has jurisdiction to determine the entire question presented by the record, namely, whether the complaint states a cause of action under Section 7 of the Sherman Act.

As the complaint comprises some twenty printed pages of the record, it may be well to attempt an abstract of it, and we think the material allegations of the complaint are as follows:

That the plaintiffs are engaged in interstate commerce as manufacturers of hats, who solicit orders from customers in other states, and ship their product manufactured at

Danbury, Connecticut, to such customers, outside of the State of Connecticut; that the defendants are members of one or more local labor unions of hat makers and finishers, and are affiliated or connected with other labor organizations in other states; that through certain magazines and the employment of agents, and the ownership of a union label, they are enabled to promulgate and carry into effect boycotts of manufacturers who will not bring their factories under union conditions of wages and employment; that they have declared and carried into effect such boycotts in the past; that their general scheme is to bring all hat factories under union conditions, and they have brought a large number of them under such conditions; that in pursuance of such general plan, and with the special purpose of unionizing plaintiffs' factory, the defendants on or about a certain day, entered into the conspiracy particularly described in detail in Paragraph 20 of the complaint, and in pursuance thereof, they afterwards did the acts and things particularly set forth in Paragraph 21 of the complaint, which paragraphs may fairly be summarized as follows:—

(1). That the defendants agreed to, and did simultaneously withdraw from plaintiffs' employment for the purpose and with the effect of temporarily crippling the manufacture of hats intended for export.

(2). That they agreed to make, and did make, false representations as to the plaintiffs' treatment of employes,

for the purpose of creating a prejudice against the plaintiffs' hats.

(3). That they declared and carried into effect a boycott of the plaintiffs' hats and of the plaintiffs' customers in other states.

(4). That such boycott was carried out by oral and published statements to the plaintiffs' customers that unless they refrained from dealing in and buying the plaintiffs' hats, they would be placed on the unfair list of the American Federation of Labor, and that while they continued to buy and deal in the plaintiffs' hats the patronage of the union would be withdrawn from them, and that the friends of organized labor would refuse to buy any goods whatever from them, or from retail dealers who bought goods of them.

(5). That in point of fact, the plaintiffs' customers, who continued to buy and deal in the plaintiffs' hats, did lose the patronage of a large number of their former customers; the union label, and its absence from plaintiffs' hats, serving to identify the hats for that purpose.

(6). That in consequence of such experience and of such notifications, and of such loss of trade, many of the plaintiff's customers ceased buying the plaintiffs' hats, which they would otherwise have bought; and in consequence thereof the plaintiffs' sales and shipments to customers in

other states were diminished, and the plaintiff and his customers damaged.

The question is whether upon these allegations the plaintiffs can maintain an action under Section 7 of the Sherman Act.

We discuss this question both upon broad jurisdictional grounds, and with respect to the statute as construed.

I

Upon general principles the complaint states no cause of action which falls within the federal jurisdiction over controversies between citizens of the same state.

The case presents a phase of the familiar conflict between federal and state jurisdiction over commercial transactions. The general principles upon which the constantly recurring controversies upon this subject must be determined cannot be questioned to-day. A completed commercial transaction between a manufacturer in one state and a customer in another state ordinarily involves a series of operations, some of which are exclusively within the domain of the federal jurisdiction, and others within the exclusive jurisdiction of the states. The solicitation of orders for goods to be manufactured in another state; the transit of the goods from the place of shipment in the state of origin until delivered to the consignee in the state of

destination; the disposition of the goods in the state of destination up to the point where they become mingled with the common mass of property therein,—these are operations concededly with the exclusive federal power of regulation. But the manufacture of the goods in the state of origin, whether intended for export or not; and their disposition after they once become mingled with the common mass of property in the state of destination; are as concededly with the exclusive state regulation of domestic commerce.

And as to the precise point at which goods imported from another state become so mingled with the common mass of property in the state of importation, as to pass out of the domain of interstate commerce, it must also be conceded upon the repeated decisions of this court that this change of legal status occurs:

(a) On the first sale of the original package within the state of importation.

(b) On the breaking up of the original package by the consignee prior to offering of the contents for sale.

Inasmuch, therefore, as there is no suggestion in this complaint of any sale or attempt to sell the plaintiffs' hats in original packages, we must begin this branch of the discussion with the conceded proposition that the manufacture of the plaintiffs' hats in Connecticut, and their disposition in the state of destination after delivery to the consignee,

are matters which are within the exclusive state power of regulation, even though such regulation might necessarily diminish the volume of the plaintiffs' interstate business.

> "The fact that an article is manufactured for export to another state does not of itself make it an article of interstate commerce, and the intent of the manufacturer does not determine the time when the article or product passes from the control of the state and becomes commerce."

Coe vs. Erroll, 116 U. S. 517, 525.

Kidd vs. Pierson, 128 U. S. 1, 24.

As to the regulation by a state of the sale within its territory of imported goods, this court said in the License Cases, 5 Howard, 504, and repeated in Leisy vs. Harding, 135 U. S., p. 116:

> "These state laws act altogether upon the retail or domestic traffic within their respective borders. They act upon the article after it has passed the line of foreign commerce and become a part of the general mass of property in the state. These laws may, indeed, discourage imports and diminish the price which ardent spirits would otherwise bring. But although a state is bound to receive and permit the sale by the importer of any article of manufacture which Congress authorizes to be imported, it is not bound to furnish a market for it, nor to abstain from the passage of any law which it may deem necessary or advisable to guard the health or morals of its citizens, although such law may discourage importations, or diminish the profits of the importer, or lessen the revenue of the general government."

It seems to follow that the Federal jurisdiction cannot include combinations of persons whose operations restrain

interstate commerce only indirectly, and incidentally to the direct effect of the combination on the manufacture of the plaintiff's hats in Connecticut, or on the disposition of such hats in other states after the breaking up of the original package of importation. As the State of Connecticut may regulate the manufacture of any article within its limits, although the volume of interstate commerce in such articles is thereby lessened; and as the State of California may regulate the sale of any articles imported from Connecticut after the original package of importation has been broken up, although the volume of interstate commerce in such articles be thereby lessened; so it seems clear that a combination of persons to restrict the manufacture of the plaintiffs' hats in Connecticut, or to restrict their sale in California after the original package of importation has been broken is a combination which, on general principles, is to be dealt with by the several states, respectively, and not by the United States.

> "An agreement may in a variety of ways affect interstate commerce, just as state legislation may, and yet, like it, be entirely valid, because the interference produced by the agreement or by the legislation is not direct."
>
> Hopkins vs. U. S., 171 U. S., 578, 594.
>
> U. S. vs. Knight, 156 U. S., 1.

It will, however, be said that the complaint alleges not only a restraint of sales at retail after the hats have been mingled with the common stock of goods within a state;

but also a restraint of purchases which would otherwise have been made by the plaintiffs' wholesale customers in California and elsewhere from the Connecticut manufacturer. This prevention or diminution of purchase and sale as between the plaintiffs and their customers in other states was the only point of the complaint to which the original certificate of the Circuit Court of Appeals was directed; and if we are correct in our assumption that this combination cannot be drawn within the federal jurisdiction unless it bears directly on some transaction which is itself *interstate*, as distinguished from *intra state* commerce; then this restraint of future purchases by customers in other states furnishes, so far as the broad jurisdictional question is concerned, the sole debatable issue arising on this record; because strikes, misrepresentations and restraint of domestic sales by retail dealers are clearly outside of the federal jurisdiction.

It is true, as the plaintiffs claim, that the complaint should be read as a whole, but it is also true that the whole is no greater than the sum of its parts.

In the cases relied upon by the plaintiffs in error there has been present the element of a direct restraint by legislation, contract or physical interference, of some transaction or operation admittedly belonging to interstate, as distinguished from intra state commerce; and it has been held that the federal jurisdiction was not ousted because such legislation, contract or interference also affected other

operations and transactions admittedly belonging to intra state commerce.

The converse of this proposition must be equally true, namely, that if the direct restraint of legislation, contract or interference is confined to operations admittedly belonging to intra state commerce, the state jurisdiction will not be ousted, because such legislation, contract or interference also affects other operations relating to the same general transaction, which admittedly belong to interstate commerce.

This, we understand, to be the doctrine of the cases already cited, and of many other cases hereafter referred to relating specifically to the Sherman Act.

Coming now to the allegations of this complaint which relate to interference with future sales between the plaintiffs and their wholesale customers in other states:—

The substance of these allegations is that the defendants, through their agents, threatened wholesale dealers and their customers with a boycott from the American Federation of Labor, if they purchased or handled the plaintiffs' hats; that they notified such wholesale customers that they might deal in hats of any other non-union manufacture, except the plaintiffs', and demanded of them that they should agree not to buy or deal in the plaintiffs' hats, under threat of being boycotted; and used the union label,

or its absence from the plaintiffs' hats to point them out to be boycotted; and that on the refusal of some such wholesale customers to comply with the defendants' demands, the defendants, or their agents, published the notices set forth at length in the complaint, in effect calling on organized labor and their friends to have no dealings with such wholesale customers; and also notifying retail dealers that organized labor and its friends would not patronize retail dealers who dealt with such wholesale customers. In consequence thereof, the purchase of the plaintiffs' hats by customers in other states has been diminished.

Is this a direct interference with interstate, as distinguished from intra state commerce?

No doubt, the purchase and sale of goods between a dealer in one state and a manufacturer in another state is a part of interstate commerce; but it is plain that there is here no allegation of any obstruction of the current of intercourse or dealing between the wholesale customer and the manufacturer, nor any interference with the wholesale customer as to the disposition of goods not already mingled with the common stock.

The complaint fairly alleges a diversion of plaintiffs' trade by inducing customers in another state not to buy his goods. So long as it is understood that the means employed for diverting this trade are means operating on

the customer and not operating directly upon the course of commerce, it is immaterial whether the means employed be lawful or unlawful.

We contend that there is a vital jurisdictional distinction between injuring the plaintiffs' business by an obstruction located at a point where it impedes free intercourse and dealings between plaintiffs and their customers in other states, up to the point where the original package is broken; and injuring the plaintiffs' business by bringing to bear upon wholesale customers in other states persuasion, intimidation, coercion, or whatsoever influence having the effect of preventing such customers from further dealings with the plaintiffs, at the peril of losing local trade.

Notwithstanding certain unavailing allegations of legal conclusion, it is plain from the whole complaint that the defendants have no ultimate design upon interstate commerce as such, and that their real design is to unionize the plaintiffs' factory, or, if you please, to bring all hat factories in the United States under union conditions. True, that fact will not protect them, if in the pursuit of such design they employ means which directly obstruct the course of interstate commerce; but it will protect them unless the use of such means is specifically alleged.

Again, the conspiracy stated is not among persons who are themselves engaged in United States commerce, and

therefore its operation on the business of a non-member is not incidental to its internal effect upon interstate commerce among the members of the combination.

In this respect the combination alleged is sharply distinguished from Montague vs. Lowry, where the refusal to sell tiles in California to a non-member, except at prohibitive prices, was a part of the main agreement between manufacturers and dealers in different states to restrain competition in interstate commerce among themselves; and for the same reason this combination is distinguished from that referred to in Chattanooga Foundry vs. City of Atlanta, 203 U. S. 390; where the sale of pipe in Georgia at enhanced prices was also in furtherance of an agreement for restricting competition in interstate commerce among the members of the pool or combination.

So, in the Beef Trust case, in 196 U. S. there was a sufficient allegation of an agreement to regulate the interstate commerce of the parties to the combination, and it was held that other allegations of domestic transactions in furtherance of such main purpose were properly pleaded as part of the general scheme.

And in Loder vs. Jayne, 142 F. R., 1010, where the refusal to sell "to aggressive cutters" was in furtherance of the main object of the combination to fix the wholesale and retail price of goods.

This case, however, more nearly resembles United States

vs. Anderson where the refusal to deal with non-members or with commission merchants who bought and sold to non-members was for the purpose of bringing all yard traders in the Kansas City Stock Yards into the Association that they might be subject to its jurisdiction, and be compelled by its rules to conduct their business in the manner prescribel by its by-laws. In that case, the business in question was assumed to be interstate commerce, and the business of a non-member who stood out, as well as of commission merchants who persisted in dealing with such non-member, was diminished, as appears from the bill and affidavits; and as is manifest, for otherwise the "boycott" would have been harmless and ineffectual, and would not have been made the subject of an action by the United States.

Nevertheless, such diminution of the non-member's business was held not to be in restraint of interstate commerce, because the Association, although its members were engaged in interstate commerce, did not undertake either to regulate such interstate commerce among its own members, or to restrict the free course of dealing between the non-member and his customers in any other respect except by refusing to deal with him, and by refusing to deal with his customers if they continued to patronize him.

The circumstance that in this case the plaintiff is a seller of goods and his customers are buyers, while in the Ander-

son case the plaintiff was a buyer of goods and his customers sellers, cannot be material, especially as this court in the Beef Trust case has held that the purchase of cattle in these very stock yards, in view of the conditions under which the business was ordinarily carried on, is in itself interstate commerce. 198 U. S., 398, 399.

It was urged in the courts below that the Court:

> "must assume from the pleadings that the primary principal and vital purpose of the combination was to destroy an existing interstate traffic, amounting to four hundred thousand dollars per annum."

It seems unnecessary to argue this proposition, for if true it would require the federal courts to take jurisdiction of every case of combination in which the pleader saw fit to allege such an *intent*, irrespective of whether his allegation was well founded in the facts pleaded or not.

But where, as in this case, the jurisdiction depends upon the character of the conspiracy with respect to its direct incidence upon interstate commerce; it is clear that the facts must be stated, and the question of jurisdiction be determined upon those facts, and not upon the general averments of the intent and purpose with which they were done. As was said of such allegations in the case of Whitwell vs. Continental Tobacco Co., 125 F. R., pp. 454, 457: also a suit under Section 7 of the Act:

> "They serve no purpose save to foreshadow argument of counsel relative to the legal effect of the facts which the complaint sets forth. They neither state,

> nor aid in the statement of any cause of action, because they disclose no fact, and the only question here is whether the facts stated in the complaint constitute a cause of action."

It is submitted that upon general jurisdictional principles, the combination stated in the complaint is not brought within the federal jurisdiction over controversies between citizens of the same state.

II.

The complaint states no cause of action under the Sherman Act as construed by this Court.

In a preliminary way, it is to be observed that the transaction stated in the complaint, so far as it affects the plaintiffs' property and business, is a very common form of dispute between labor and capital. Doubtless the Court will take judicial notice of that fact. Moreover, the complaint itself charges generally that the defendants and their confederates have conducted numerous boycotts of the same kind, and in Paragraph 17 specifically alleges that the United Hatters of North America alone have "within a very few years" and by means of such boycotts forced some seventy enumerated manufacturers of hats in the United States to unionize their factories.

The circumstance that this is the first suit which has been brought under Section 7 of the Sherman Act upon

the allegation that such a boycott is a combination in restraint of interstate commerce would not of itself be a cogent argument in support of this demurrer. But there have been few subjects which have excited more general interest in the profession than the Sherman Act, and there are few classes of controversies more closely contested than those between labor and capital; and it is a fair inference that the question which is now brought to this Court for the first time would long ago have been passed upon except for a general concensus of opinion in the profession that the statute, as construed by this Court, did not include combinations of the character described in this complaint.

For the convenience of the Court we have printed as an appendix to this brief a summary of all the reported cases under the Sherman Act in their chronological order, and have classified those which appear to be relevant to this issue under three groups. Up to the present time, the only combinations or conspiracies which have been held to be forbidden or unlawful under the act are:

(a). Conspiracies and combinations among common carriers engaged in interstate commerce, in violation of the rule of free competition among themselves.

(b). Combinations among manufacturers or between manufacturers and dealers engaged in interstate commerce, in violation of the rule of free competition among themselves, coupled in some cases, with artificial restraints upon their dealings with non-members.

(c). Combinations among working men employed in and about the operations of interstate commerce, whose actual or threatened effect was to hinder and obstruct the carriage of goods or passengers in transit between the several states.

The cases relating to these three classes of combinations are marked with their appropriate prefix letter, and those which are not so marked are either criminal cases, which went off on other points, or cases where a violation of the statute has been set up in defense to a cause of action in connection therewith; and in patent suits and suits for the recovery of money upon contract.

There will be no dispute between us as to the effect of the decisions of this court in construing the Sherman Act. We assume that the effect of those decisions was comprehensively stated in the opinion of Mr. Justice Harlan in the Northern Securities Co. cases, 193 U. S., on pages 331-332, and in the opinion of this court in

U. S. vs. Knight, 156 U. S., 1,
Hopkins vs. U. S., 171 U. S., 578,
Addyston Pipe & Steel Co., 175 U. S., 211,
Anderson vs. U. S., 171 U. S., 604,
Montague vs. Lowry, 193 U. S., 27,
Swift vs. U. S., 195 U. S., 375,
Chattanooga Foundry vs. Atlanta, 203 U. S., 391.

From these cases, and from the decisions of the lower courts it will appear:

1.

That hitherto no combination among railroads or among private persons engaged in interstate commerce has been held to be within the act, except such as violate the rule of free competion between the parties themselves.

All of these combinations, in so far as they have been held obnoxious to the act, were combinations for regulating prices; but we do not mean to say that the regulation of prices is the only way of violating the rule of free competition. For example, in the Addyston Pipe case, there was an agreement parcelling out and allotting the market upon geographical lines, which was as much in restriction of free competition as the agreement to refrain from bidding against each other within the allotted territory.

In Montague vs. Lowry, the agreement of the Tile Mantel & Grate Association was between manufacturers and dealers in other states whereby the manufacturers were bound under penalty of forfeiting their membership not to sell their product directly or indirectly to any dealers who were not members of the association and the dealers bound themselves not to purchase directly or indirectly from any manufacturer except a member of the association, and also not to sell to any non-member for less than a fixed price. Plainly, one object of this agreement

was to restrict the interstate commerce of the parties making it as to competition in prices.

In the Beef Trust case, the combination suppressed competition among members of the combination in the purchase of cattle at the stock yards, which the Court held to be interstate commerce, and the bill also charged an agreement as to prices at which they would sell their product to the dealers in the several states.

On the other hand, combinations among persons engaged in interstate commerce which lack this element of restricting free competition in interstate commerce among themselves have uniformly been held in this Court and in all Courts not to be within the act.

The decision in the Sugar Trust case turned upon the distinction between manufacture and commerce; but that is only one way of saying that the agreement did not extend to a regulation of prices or other artificial restraint upon competition in sales.

In the Hopkins case, it was held that the parties were not themselves engaged in interstate commerce; their business being merely to provide facilities and service for which they charged a commission on the sales effected by them.

In the Court below it had been found, according to the head-note, that in pursuance of a by-law forbidding business dealings between members and non-members,

> "Persons attempting to carry on business without joining the Exchange were systematically blacklisted and boycotted, and thus eventually prevented their transacting business."

But this Court said:

> "Whether they refuse to transact business which is not interstate commerce, except with those who are members of the Exchange, and whether such refusal is justifiable or not, are questions not open for discussion here. As defendants' actions or agreements are not a violation of the Act of Congress, complainants have failed in their case, and the order for the injunction must be reversed."

In the Anderson case which presented a similar combination among yard traders instead of commission merchants, this Court held that, assuming the business to be interstate commerce, the combination was not in direct restraint thereof.

Both the Hopkins case and the Anderson case resemble the present case, in that the defendants are charged with restraint upon the business of *third parties;* and from the statement of facts on page 609 of the Anderson case it appears that in pursuance of one of its by-laws members of the Traders' Life Stock Exchange refused to do business with non-members and with commission merchants who sold to non-members.

> "And where commission firms sold cattle to traders and speculators upon the market who were not members of the Exchange, the Association and members thereof would boycott the commission firm making

> such sales, and refuse to purchase any cattle from them, and refuse to go into the lots and look at cattle which had been consigned to them."

The bill alleged that the purpose of this by-law was to restrain interstate commerce by preventing non-members from buying and selling cattle in the Kansas City market; but this Court held that the design of the defendants eventually was to bring all yard traders into the Association as members (p. 618).

The case was distinguished from the Addyston Pipe case in the following language, which is clearly applicable to Montague vs. Lowry, and to the Beef Trust case, and to all other cases of combinations which have been held to be in restraint of interstate commerce.

> "The agreement in all these cases provided for fixing the prices of the articles dealt in by the different companies, being in one case iron pipe for gas, water, sewer and other purposes, and coal in the other two cases. If it were conceded that these cases were well decided they differ so materially and logically in their nature and purpose from the case under consideration that they form no basis for its decision. This Association does not meddle with prices and itself does no business. In refusing to recognize any yard trader who is not a member of the Exchange, we see no purpose of thereby affecting, or in any manner restraining interstate commerce, which if affected at all, can only be in a very indirect and remote manner. The rule has no direct tendency to distinguish or in any way impede or restrain interstate commerce in the cattle dealt in by defendants. There is no tendency as a result of the rule directly or indirectly to restrain competition among defendants for the class of cattle dealt in by them."

As to the refusal to deal with non-members, or with commission merchants who sold to or purchased from non-members this Court said (pp. 618, 619):

> "And if for the purpose of compelling this membership the Association refused business relations with those commission merchants who insist upon buying from or selling to yard traders who are not members of the Association, we see nothing which can be said to affect the trade or commerce in question other than in the most roundabout and indirect manner." * * * "If for the purpose of increasing the membership of the Exchange and of thus procuring the transaction of their business upon a proper and fair basis by all whom are engaged therein, the defendants refused to do business with those commission men who sold to or purchased from yard traders who are not members of the Exchange, the possible effect of such a course of conduct upon interstate commerce is quite remote, not intended, and too small to be taken into account."

II.

It also appears from the decided cases that the only class of combinations among persons *not* engaged in interstate commerce which has hitherto been held to be within the Act is the class illustrated by the cases growing out of the Pullman strike of 1894, and by U. S. vs. Workingmen's Amalgamated Council of New Orleans.

These were cases of stoppage in transit of goods in the course of shipment from the state of origin to their destination in another state; and whatever the original or ultimate purpose of the combination may have been, these

cases present a clear example of the employment of means acting directly in restraint of commerce at a point where it is admittedly within the exclusive federal jurisdiction.

III.

Taking all the cases together, they furnish the logical rule that a combination within the act must either appear to be a combination whose object is in restraint of interstate commerce (in which case all the means employed are condemned by the purpose for which they are used); or if the combination be formed for some other object, that some one of the *means* employed must appear to be *in itself* a direct restraint upon interstate commerce. Nor is the Court bound either by the ostensible objects of the combination, if its objects be stated in the agreement; or by the general allegations of a pleader as to its object, or as to the effect of any means employed to carry it out. The question is jurisdictional and must be decided on the *facts* alleged.

IV.

The design of the defendants is not to restrain interstate commerce, but to unionize plaintiffs' factory.

This is admitted by the complaint which alleges (Folio 15) that the general "scheme and purpose" of the defendants is to compel all the hat manufacturers in the United

States, including plaintiffs, to unionize their factories; and to carry out this "scheme and purpose" by destroying the interstate commerce of such manufacturers by means of boycotts,

> "until such time as the said manufacturers should yield to said demand, to unionize their factories."

And the particular combination against the plaintiffs' business set forth in Paragraph 20 is alleged to have been entered into (Folio 19),

> "in pursuance of the general scheme and purpose aforesaid to force all manufacturers of fur hats and, particularly, the plaintiffs to so unionize their factories."

The complaint also sets forth (Folio 16) that some seventy other hat manufacturers have been forced "to yield to their demands and unionize their factories;" that the defendants demanded of the plaintiffs that they should unionize their factory, and plaintiffs refused (Folio 18); and the whole tenor and effect of the complaint is that the injury to the plaintiffs' business was a means to the end of compelling them to unionize their factory, and that upon the accomplishment of that result the injury will necessarily cease, because the defendants will have no further interest in continuing to boycott the plaintiffs' hats.

Looking at the whole situation of the parties, there is no discoverable motive or design by which the defendants

may reasonably have been supposed to have been actuated, except that of unionizing the plaintiffs' factory. Their interest in the hat business lies in the conditions of wages and employment, and in increasing the market for "union label" hats which are made only in union factories, so as to give a *quid pro quo* for compliance with their terms. If, for example, the whole "general scheme and purpose" of the defendants, as alleged, were realized, and all hat factories in the United States were unionized; it is clear that even upon the plaintiffs' theory, all alleged restraint of interstate commerce would then be at an end; because the condition of being unionized is a condition which regulates the terms and conditions of employment, and does not regulate interstate commerce.

On the question of design or object, the combination charged cannot be distinguished in principle from the Anderson case. In that case, the bill alleged the object of the combination was to prevent all other persons than members of the Traders Life Stock Exchange "as aforesaid, from buying and selling cattle upon the Kansas City market." But this Court held that:

> "The design of the defendants evidently is to bring all the yard traders into the Association as members."

And it held that such design was not obnoxious to the statute.

In the present case, the complaint admits that the de-

sign of the defendants is to bring all hat factories under union conditions.

V.

None of the means for carrying out this design constitutes in itself a direct restraint upon interstate commerce.

Manifestly, strikes in local factories, the publication of false statements as to the plaintiffs' attitude toward organized labor, et cetera, and the restraint of domestic sales by retail dealers in different states, are not in themselves in restraint of interstate commerce, and as to the diminition or prevention of purchases by plaintiffs' wholesale customers in other states, we have sufficiently discussed that question upon general principles. It remains only to point out that in this respect also the case at bar cannot be distinguished in principle from the Anderson case. In that case, the exact point decided was that a boycott of the business of a person engaged in interstate commerce was not in direct restraint of interstate commerce, when it was entered into for the purpose of compelling the individual in question to join the yard traders' association. In principle, that decision must control the question whether a boycott of the plaintiffs' business for the purpose of compelling them to unionize their factory is in direct restraint of interstate commerce.

The parallel goes farther, for, in the Anderson case, the

members of the Association boycotted not only the plaintiff, but his customers, as is alleged here, and this Court said:

> "If for the purpose of compelling this membership the Association refused business relations with those commission merchants who insist upon buying from or selling to yard traders, who are not members of the Association, we see nothing that can be said to affect the trade or commerce in question other than in the most roundabout and indirect manner."

In the Anderson case it was not denied that commission merchants were warned, under penalty of losing the trade of the Association, not to deal with parties who were in process of being compelled to join the Association; and if they persisted in doing so they were in the language of the affidavits (p. 609) "boycotted" by the Association and its members.

We see no difference in principle between this case and the Anderson case, either in the object of the combination, or in the means employed to carry it into effect. In the following respects the two cases are alike:

(1) The business involved is, in whole or in part, interstate commerce.

(2) The Association has no internal effect in restraint of interstate commerce among its own members.

(3) The object or design is to compel third persons to conduct their business in compliance with the rules of the Association.

(4) The means employed to accomplish this design comprise:

(a) A primary "boycott" by the Association of a non-conforming third party or non-member.

(b) A secondary "boycott" by the Association of all customers of such third party or non-member who persist in dealing with him.

(c) A more or less successful attempt to influence said customers from dealing with such third party or non-member, under penalty of losing the trade of the Association.

(d) A like result of injury to the interstate business of such third party.

Such differences as there are between the two cases lie away from and not toward the line between the federal and state jurisdictions. In this case, the members of the Association are not engaged in interstate commerce. The object of the Association is not to bring that portion of the plaintiffs' business which is interstate commerce within the rules of the Association; but only to affect the conditions of wages and employment within the plaintiffs' factory.

Finally, the refusal of the defendants and associates to deal with the plaintiffs or with their customers, is not *pro tanto* a concerted refusal to engage in interstate commerce as was the fact in the Anderson case.

In the courts below, the plaintiffs have strenuously objected to what they term "dissection" of their complaint, and insisted that its allegation should be regarded comprehensively, and not scrutinized in detail. If each detail relates to an alleged means acting directly on domestic commerce, and only indirectly on interstate commerce, the total result may be larger in quantity, but must be of the same kind.

In the Hopkins case (pp. 595, 596) this Court said:

> "It is possible that exorbitant charges for the use of these facilities might have the same effect as a burden on commerce that a charge upon commerce itself might have. In a case like that the remedy would probably be forthcoming." Citing Transportation Co. vs. Parkersburg, 107 U. S., 691.

In the case cited, the complaint was that the ordinance of the City of Parkersburg under the assumed pretence of wharfage dues, charged unreasonable, exorbitant and excessive rates, which in fact amounted to a tax on commerce, or a duty of tonnage, but the Court held that the remedy for extortionate wharfage charges must be under the local law until Congress should see fit to regulate wharfage charges.

And so it may be said here that until Congress undertakes to regulate strikes and boycotts, the plaintiffs' remedy must be in the courts of the several states, which presumably will do their duty when called upon.

VI.

The combination alleged is not in direct restraint of commerce as such.

No doubt, if the associated object of any given conspiracy be to restrain interstate commerce within the constitutional and statutory meaning of the term "commerce," any person whose private business is injured thereby may recover.

But the converse proposition is not necessarily true. If the object of the combination is not to regulate commerce generally, but to injure the business of an individual, and if commerce is restrained only in the sense that the business of that individual is diverted to some competitor; it is, we submit, entirely unreasonable to maintain that interstate commerce in the constitutional sense has been restrained.

If, for example, the plaintiffs' business had been ruined by the free competition which it is the object of this act to insure, it is plain that interstate commerce has not been restrained, although the plaintiffs' business is gone. At what point, then, is it that the statute steps in to protect the individual business of this, or any other manufacturer, short of a contract or combination in restraint of commerce at large?

In the present case, the means employed to unionize the

plaintiffs' factory do not necessarily or intentionally involve the extinguishment of that fraction of their former business which the plaintiffs lost. It is apparent from the allegations of the complaint, and the Court might well take judicial notice of the fact, that the weapon employed to influence plaintiffs' customers was the local patronage of organized labor and its friends. This implies, of course, a *diversion* of trade rather than extinction, and it is entirely consistent with the complaint that the total volume of interstate commerce in hats has remained unaffected by the plaintiffs' alleged loss of $80,000 worth of business. That may well represent a mere diversion of a fraction of the plaintiffs' business to some of their competitors.

In the present case, the means employed to carry that object into effect are said to have involved "threats and intimidation," but that has nothing to do with the Sherman Act, nor are the so-called "threats and intimidation" anything more than a notification to parties that they must cease dealing with the plaintiffs at the peril of losing whatever fraction of local trade could be influenced by organized labor. This might prompt the customer to a calculation of the financial consequence of adopting one course or the other, but it can hardly be said to have deprived him of the opportunity of exercising his free will. In this connection it should be understood, and it so appears from the complaint that the union label of the United Hatters of North America, or rather its absence from the

plaintiffs' hats was used to indicate to the purchaser what hats should be bought, and what should not be bought.

What proportionate effect this appeal to buy goods bearing the trade-mark of the United Hatters of North America may have had in the plaintiffs' loss of business does not appear. The significant fact is that it played some large, but indeterminate, part in diverting plaintiffs' trade to the trade of union manufacturers. And this diversion is, of course, legitimate beyond criticism.

It is nowhere alleged in the complaint that the total volume of commerce has been diminished, but the persistent allegation is that the trade and commerce *of the plaintiffs* has been diminished, and in view of this limited allegation as to the consequences of the defendants' acts, and of the considerations heretofore advanced, we submit that the complaint fairly alleges a diversion of the plaintiffs' trade, as distinguished from a restraint of commerce at large.

We further contend that if such diminution of the plaintiffs' business could be said to be the *object* of the combination stated (which is denied), nevertheless such object would not be unlawful under the act because, as alleged, it is consistent with the object of diminishing the plaintiffs' trade by diverting a fraction of it to his competitors in business by means which are not in themselves unlawful under the act.

It is apparent that the purpose of the pleader in this case

is to group together a series of alleged acts not in themselves in direct restraint of interstate commerce, and which are plainly bound together by the lawful object of bringing the plaintiffs' factory under union conditions; and by broad allegations of an intent to restrain interstate commerce, or rather the interstate commerce *of the plaintiffs*, to sweep the whole series of acts under the condemnation of the Sherman Act. If this can be done, we see no limit to the extension of federal paternalism for the protection of the private business of individuals.

List of reported cases under the Sherman Act, with comments thereon, arranged in chronological order except when otherwise stated.

In submitting the following list of cases we have followed the classification above indicated by prefixing the letters (a), (b), and (c), to the cases falling under each of the above classifications.

No prefix letters are affixed to those cases which went off on other points. This class includes those criminal cases which turn upon decisions as to the insufficiency of indictments and applications for writs of habeas corpus, etc., and also those cases in which it has unsuccessfully been attempted to set up a violation of the statute in defense to a cause of action not connected therewith; e. g., patent suits, suits for the recovery upon contract for the payment of merchandise, notes, etc.

(b) U. S. v. Jellico Mountain C. & C. Co., 43 F. R., 898. Dist. of Tenn., Oct. 30, 1890.

Motion for preliminary injunction denied on account of the novelty of the issues.

(b) American Biscuit Co. v. Klotz, 44 F. R., 721. Eastern Dist of La.

Appointment of receiver refused because plaintiff was apparently a combination to monopolize trade under Act of 1890.

(b) U. S. v. Jellico Mountain C. & C. Co., 46 F. R., 432. N. D. of Tenn.

An agreement between Coal Mining Companies in one State and Coal Dealers in another State, fixing prices, etc. Held a contract in restraint of interstate commerce.

(a) Clark v. C. R. R. Co. of Georgia.

East. Dist. of Ga., May 14, 1892, 50 F. R., 338.

A voting trust controlling stock in several competing railroads held obnoxious to the Georgia statute, and intimated that it might be also within the Sherman Act.

U. S. v. Greenhutt, et al., 50 F. R., 469, Dist. of Mass., May 16th, 1892.

Indictment quashed for failure to follow language of statute.

In re Corning et al., 51 F. R., 205, June 11th, 1892. Northern Dist. of Ohio.

Application to remove the prisoner to another District for trial denied.

In re Terrell, 51 F. R., 213, So. Dist. of New York.

Application for writ of habeas corpus. Prisoner discharged on defective indictment.

(b) Bishop v. American Preservers Co., 51 F. R., 272.

North. Dist. of Ill. Action for treble damages. Plaintiff sold out to the preservers trust. Differences arose as to the contract. In attempted enforcement of the contract the alleged trust brought suits. This action was to recover damages for the attempt to enforce the contract. Demurrer to declaration sustained.

In re Greene, 52 F. R. 104.

So. Dist. of Ohio. Aug. 4th, 1892.

Petition for writ of habeus corpus. Allegations of indictment held insufficient, and petitioner discharged.

U. S. v. Nelson, 52 F. R., 646.

Dist. of Minn., Oct. 10, 1892.

Demurrer to indictment sustained. Agreement between the several dealers to raise the price of lumber held not a restraint on interstate commerce.

(a) U. S. v. Trans-Missouri Freight Asso., 53 F. R., 440, Nov. 28, 1892. Bill in equity for injunction denied on the ground that the words "contract in restraint of trade" in the statute had the same meaning as at the

common law; and further, that the Act did not apply to railroads, these being already regulated by the interstate commerce Act. This case was afterwards reversed by the U. S. Supreme Court as to both points decided.

Blindell v. Hagen, 54 F. R., 40, Feb. 9, 1893. Held that the statute did not authorize the bringing of injunction suits or suits in equity by any parties except the U. S.; but the Court took jurisdiction on different ground.

(c) U. S. v. Workingmen's Amalgamated Council of New Orleans, 54 F. R., Dist. of La., March 25, 1893. Suit to enjoin the conspiracy to interfere with interstate commerce. The defendants were carrying on a general strike of all Union men, actually preventing the transportation of goods and merchandise from Government warehouses to wharves by force.

(c) Waterhouse v. Comer, 55 F. R., 149, Ga., April, 1893. Petition of the Brotherhood of Locomotive Engineers to have the Court direct a receiver to make a contract with it. In the course of the opinion, Speer, D. J., observed that the rule of the Brotherhood requiring any engineer to refuse to hire a car of any road on which a strike authorized by the Brotherhood was in existence was a rule in violation of the Sherman Act, as well as of other Federal statutes, and inferred that hereafter strikes or boycotts to hinder and delay the work of transportation companies would be amenable to the Sherman Act.

U. S. v. Patterson, 55 F. R., 605, Mass., Feb. 28th, 1893.

Indictment dismissed.

(b) Dueber Watch-case Mfg. Co. v. Howard, 55 F. R., 851, N. Y., May, 1893. Agreement by a number of manufacturers of watch-cases to fix arbitrary prices on their goods and not to sell the same to any dealers buying of the plaintiff, held not in violation of the statute.

(b) U. S. v. Trans-Missouri Freight Asso., 58 F. R., 58. C. C. A., 8th Circuit, Oct., 1893. Opinion of the Circuit Court in 53 F. R. affirmed.

U. S. v. Patterson, 59 F. R., 280 Mass., June, 1893.

Demurrers to indictment overruled. No relevancy to this case.

(b) U. S. v. Knight, 60 F. R , 306, Pa., Jan., 1894. Bill in equity. This is the Sugar Trust case; subsequently affirmed by the Supreme Court in 156 U. S., 1, on the ground that a monopoly in the manufacture of a necessary of life could not be suppressed under the provisions of the Sherman Act, and the distinction between manufacture and commerce pointed out.

U. S. v. Knight, 60 F. R., 934, March, 1894. Same case in the C. C. A., 3d Circuit.

The following cases are prosecutions arising out of the Pullman strike of 1894:

(c) So. Cal. Rwy. Co. v. Rutherford, 62 F. R., 796, June 30, 1894.

(c) U. S. v. Clune, 62 F. R., 798.

(c) U. S. v. Buchannan, July 16th, 1894.

(c) U. S. v. Elliot, 62 F. R., 801, Mo., July 6th, 1894.

Thomas v. Cincinnati, etc., Rwy. Co., 62 F. R., 803, July 13, 1894.

(Interference with receiver, contempt of court; opinion by Taft.)

(c) U. S. v. Agler, 62 F. R,, 824.

(c) In re Charge to Grand Jury, 62 F. R., 828, July 10, 1894, Ill.

(c) Charge to Grand Jury, 62 F. R., 834, June 29th, 1894, So. Dist. Cal.

(c) Charge to Grand Jury, 62 F. R., 840, July, 1894, Cal. No. Dist.

(c) U. S. v. Elliot, 64 F. R., 27, Mo., Oct. 24, 1894. Demurrer overruled.

(c) U. S. v. Debs, 64 F. R., 724. Interference with receiver; contempt of court, Dec., 1894.

To these cases should be added:

(c) U. S. v. Cassidy, 67 F. R., 698, Apr., 1895, which was the trial of the leaders of the Pullman Strike in California. The jury trial occupied five months; the charge to the jury covers over eighty printed pages of the report; the jury were deliberating four days and nights and failed to agree; the final ballot stood ten to two for conviction on the charge of obstructing mails, eight to four for conviction on the charge of conspiracy to restrain interstate commerce.

All the above cases relating to the Pullman Strike are cases of actual physical restraint of transportation of goods in transit between different States.

Pidcock v. Harrington, 64 F. R., 821, Dec., 1894.

Private individual may not bring suit in equity under the Sherman Act.

(b) Dueber Watch-case Co. v. Howard, 66 F. R., 637, C. C. A. 2d Circuit. On demurrer to the complaint. The case in the 55th F. R. affirmed. Three opinions filed; two Judges agreed that the complaint was insufficient because the interference with interstate commerce was not clearly alleged; one, that the combination stated in the complaint was not within the statute because not an "unreasonable" restraint of trade; one dissenting opinion. The combination alleged was of manufacturers to fix prices and to refuse to sell goods to dealers who purchased from the plaintiff.

Elliston v. Evans, 69 F. R., 908,95 So. Carolina.

Action to recover treble damages from the "State Board of Control" on the ground that the dispensary liquor laws of So. Carolina was in violation of the Sherman Act; injury complained of was the seizure of the plaintiff's whiskey. Held that the statute did not apply to the case of a State assuming the entire monopoly of the liquor business within its borders.

(a) P. R. R. Co. v. Atchison R. R. Co., 73 F. R., 438, Jan., 1896.

Arrangement between two railroads to interchange freight and passengers by *through* bills of lading and tickets, to the exclusion of other railroads from like privileges, held not in violation of the Act.

The C. E. Wisehall, 74 F. R., 802, N. Y., 1896.

One who accepts service of a tug on a towage contract cannot escape payment by charging that the owners were members of a combination unlawful under the Act.

(a) U. S. v. Joint Traffic Asso., 76 F. R., 895. Bill to restrain association of railroads; similar to Trans-Missouri case. Bill dismissed on demurrer. This case was also reversed on appeal to the Superior Court.

(b) Greer v. Stoller, 77 F. R., 1, Mo., 1896.

Action against Kansas City Live Stock Exchange, by suspended member, for injunction. Plaintiff was under suspension only. Held, irrespective of any other question, that he couldn't complain of the enforcement of the rules so long as he remained a member.

(b) U. S. v. Addystone Pipe & Steel Co., 78 F. R., 712.

Bill dismissed on supposed authority of U. S *v.* Knight.

This case was reversed on appeal to the U. S. Supreme Court.

(b) U. S. Hopkins, 82 F. R., 529, Kansas, 1897.

Suit to enjoin Kansas City Live Stock Asso.

This case is interesting because it is the first case re-

ported after the decision of the U. S. Supreme Court in the Trans-Missouri Freight Asso. case. The Circuit Court held that the Kansas City Live Stock Asso. was a conspiracy obnoxious to the Sherman Act.

The Court enjoined the defendant, but the case was afterwards reversed by the U. S. Supreme Court on appeal.

(b) U. S. v. Coal Dealers Asso. of Cal., 85 F. R., 252 Cal., 1898.

Held that an agreement by importers and dealers in coal with a local dealers association to arbitrarily regulate prices and restrain competition was within the Act.

(b) U. S. v. Addystone Pipe & Steel Company, 85 F. R., 271, C. C. A. 6th Circuit Court, Feb., 1898.

Reversing decree of Circuit Court in 78 F. R., 712, on authority of Trans-Missouri Freight Asso. case. This decision affirmed on appeal to the U. S. Supreme Court, 175 U. S. 211.

Moore v. U. S. 85 F. R., 465, C. C. A. 8th Circuit, Feb., 1898.

Indictment for restraining trade in "any Territory of the United States" dismissed after admission of Utah as a State.

(a) R. R. Co. v. Miami S. S. Co., 86 F. R., 407, C. C. A. 5th Circuit, March, 1898.

Agreements for transmission of freight and passengers on through bills of lading and through tickets, with some carriers, to the exclusion of others, not within the statute.

(a) So. Indiana Co. v. U. S. Express Co., 88 F. R., 659.

Indiana, Aug., 1898. Same rule applied to express companies.

Block v. Standard Distilling Co., 95 F. R., 978, O., July, 1899.

Bill held multifarious.

(b) Lowry v. Tile and Mantel Asso., 89 F. R. 817, Cal., Nov., 1899.

Agreement between members to raise prices and control output held within the statute, on demurrer.

Same case, 106 F. R., 38. Action to recover treble damages; verdict for $500. This case affirmed on appeal to U. S. Supreme Court, 196 U. S., 38.

Union Sewer Pipe Co. v. Connelly, 99 F. R., 354, Ill., Jan., 1900. No defense to a note that the payee is an illegal combination. Affirmed 184 U. S. 840.

(b) City of Atlanta v. Chattanooga Foundry Co., 101 F. R., 900, Tenn., May, 1900. Held on demurrer to pleas of statute of limitation that an action to recover damages under Sec. 7, is not an action to recover for the penalty or forfeiture, but a suit for enforcement of a civil remedy for

private injury, and the limitation of such action is governed by the statute of the State in which the action is brought.

(b) Gibbs v. McNeeley, 102 F. R., 594, Dist. of Washington, June, 1900. Held on demurrer that a count alleging the publication and circulation of libelous circulars whereby the plaintiff's business was injured, being in pursuance of the combination in restraint of interstate commerce, stated a good cause of action under the Act.

But see same case, 107 F. R., March, 1901; where on the trial it was held that the alleged libel was not proved, and said, "With the utmost respect for the learned Judge just referred to, I am convinced that the allegations in the fourth cause of action are not sufficient."

(b) In U. S. v. Ches. & O. Fuel Co., 105 F. R., 93; held that a contract by which a corporation agreed to take the entire output of a number of coal mines and to sell the same at prices fixed by the Executive Board, etc., was within the Act.

(b) Bishop v. Amer. Preservers Co., 105 F. R., 845, Ill., Oct., 1900. On demurrer held section 7 gives no right against a combination to one who was a party to its organization to recover damages resulting from the enforcement of the alleged illegal agreement.

Otis Elevator Co. v. Geiger, 107 F. R. 131, Ky., Mch.

30, 1901. Suit for infringement of a patent. Held on exceptions to answer that defendant in a patent suit could not assert as a defense that the plaintiff was a member of an organization illegal under the Sherman Act.

Other cases determining the same point are:

Brown Saddle Co. v. Troxel, 98 F. R., 620.

Gen. Electric Co. v. Wise, 119 F. R., 922.

Natl. Harrow Co. v. Quick, 74 F. R., 236, 239, (overruling same v. same, 67 F. R., 130).

Natl. Folding Box & Paper Co. v. Robertson, 99 F. R., 985.

Columbia Wire v. Freeman Wire Co., 71 F. R., 306.

Bonsack v. Smith, 70 F. R., 383.

Metcalf v. Amer. School Dist. Furniture Co., 108 F. R., 909, N. Y., May, 1901.

A stockholder may enjoin an alleged illegal transfer of property of the corporation made in pursuance of a conspiracy to restrain interstate commerce, but may not join a demand for treble damages, as such damages are recoverable only at law.

(a) D. L. & W. R. R. v. Frank, 110 F. R., 689, N. Y., 1901.

Suit to enjoin a ticket broker from selling special tickets not transferable upon their face. These tickets were issued under an agreement known as the Trunk Line Association, which pooled all its receipts and divided them up

on an agreed basis. Held that the association was unlawful and complainant could not maintain the action.

Foote v. Buchannan, 113 F. R., 156, Jan. 1902. On writ of habeas corpus petitioner refused to answer questions on the ground that they might incriminate him. In the Circuit Court he was released on the authority of Counselman v. Hitchcock, 142 U. S. 547.

(b) Montague v. Lowry, 115 F. R., 27, C. C. A. 9th Circuit, Feb., 1902. This is the same case as Lowry v. Tile and Mantel Asso., 106 F. R., 38, affirmed, and the case distinguished from Hopkins v. U. S. 171, U. S., 578, and from Anderson v. U. S., 171 U. S., 604.

(b) Ches. & O. Fuel Co. v. U. S. 115, F. R., 610; same case as in 105 F. R., 93, and decree affirmed.

(b) Gibbs v. McNeeley, 118, F. R., 120, C. C. A. 9th Circuit, Oct., 1902. This case has been already referred to. Its disposition in the Circuit Court of Appeals did not turn upon the alleged injury resulting from the so-called libelous publications, this cause of action having been disposed of adversely to the plaintiff on the questions of fact. Upon the other causes of action it was held that an association of manufacturers and dealers in shingles for the purpose of controlling the production and price of such shingles, is a combination in restraint of interstate commerce.

(a) U. S. v. No. Securities Co., 120 F. R., 721; held that the creation of a "Holding Corporation" for the purpose of acquiring the stock of competing railroads engaged in interstate commerce; and issuing its own securities in lieu thereof, is a combination in violation of the Act. Affirmed in Northern Securities Co. case, 193 U. S., 197.

(a) Board of Trade v. Christy Co., 121 F. R.. 608, Mo., March, 1903. Contract between Board of Trade and Telegraph Companies whereby the latter agreed not to furnish quotations to "bucket shop" not in violation of the Act.

Metcalf v. Amer. School Furniture Co., 122 F. R., 115. Same case as in 108 F. R., 909, upon amended bill. Bill dismissed on the ground that the sale by a corporation of its property made within its powers cannot be repudiated on the ground that the motive of the purchaser in acquiring the property was to violate the Act.

(b) Whitewell v. Continental Tobacco Co., 125 F. R., 454, Nov., 1903. C. C. A. 8th Circuit; action to recover treble damages. Demurrer to complaint sustained, and test of validity of the combination defined in the light of numerous authorities.

(b) Philips v. Portland Cement Co., 125 F. R., 593, C. C. A. 8th Circuit, 1903. Contract of sale conditioned that the subject matter should not be sold or shipped out of the State, was not within the Act.

(b) City of Atlanta v. Chattanooga Foundry Co., 127 F. R., 23, C. C. A. 6th Circuit, Dec. 1903. Suit for treble damages for increased price which City was compelled to pay for pipe in consequence of the combination in restraint of trade. The defendant was a member of the same combination condemned by the Supreme Court in the Addystone Pipe case. Held that the municipality could recover.

(b) Robinson v. Suburban Brick Co., 127 F. R., 804, C. C. A. 4th Circuit, Feb., 1904.

Held that vendors contract not to engage in competition with the vendee of its good will not in violation of the Act, and defining the difference between manufacturing and commerce.

(b) Booth v. Davis, 127 F. R., 875, Mich., 1904. Same doctrine as last case.

(b) Loewe v. Lawlor, 130 F. R., 633, Conn., June, 1904. The State Court is without jurisdiction to enforce the remedy given by section 7 of the Sherman Act, and therefore the same cause cannot be pending in both courts.

(b) Davis v. Booth, 131 F. R., 31, C. C. A. 6th Circuit.

Contracts involving aggregations of properties by absolute purchase not necessarily illegal under the Act.

(b) Rice v. Standard Oil Co., 134 F. R., 464, N. J., Jan. 1905.

Declaration in damages under Sec. 7 of the Act struck out under New Jersey practice as too vague and indefinite.

(b) Bobbs Merrills Co. v. Straus, 139 F. R., 155., N. J., Feb., 1905. A combination of book publishers to keep up prices of copyrighted books, refusing to sell such books at wholesale to retailers who cut prices illegal. This suit was brought on the theory that the defendant was infringing the copyright by disobeying a printed notice that the book should not to be sold for less than a given price. The Court refused to take this view of the case and held that in the alternative view of it regarded as a suit to enforce the illegal agreement it could not be maintained.

(b) Loder v. Jayne, 142 F. R., 1010, Pa., Jan., 1906. Verdict for plaintiff under Sec. 7 sustained. There was a combination of three voluntary associations to fix retail prices of drugs and to refuse to sell to "aggressive cutters." Combination was held to be unlawful.

Hadley Glass Co. v. Highland Glass Co., 143 F. R., 242, C. C. A. 8th Circuit, Jan., 1906. No defense to a recovery for a breach of a collateral contract for the manufacture and sale of glass that the plaintiff is a member of a combination illegal under the Act.

(b) D. L. & W. R. R. v. Cutter, 147 F. R., 51.

(b) Mines v. Scribner, 147 F. R., 927.

(b) Jayne v. Loder, 149 F. R., 21. C. C. A. 3d Circuit. New trial for error in admitting evidence as to damages.

(b) U. S. v. MacAndrews & Forbes, 149 F. R., 823, N. Y., 1907. Agreement to fix prices.

Same v. Same, 149 F. R., 837. Motion in arrest of judgment and to set aside verdict denied.

(b) Thompson v. Union Castle Co., 149 F. R. 933 N. Y., 1907. Doctrine of Mogul Steamship case applied and complaint dismissed.

(b) Charge to Grand Jury. 151 F. R. 834. Georgia, 1907.

(b) U. S. v. Standard Oil Co., 152 F. R., 291. Missouri, 1907. Concerning power to bring in non-resident defendants.

(b) McConnell v. Connors McConnell Co., 152 F. R. 321, C. C. A. 5th Circuit, 1907. Contract in aid of monopoly of interstate commerce not enforcible.

(b) Wheeler Stenzel Co. v. Nat'l Window Class Co., 152 F. R., 321 C. C. A. 3rd Circuit, 1907. Contract held to restrain competition among its members and complaint under Sec. 7 held sufficient.

(b) John D. Park Co. v. Hartman 153 F. R. 24 C. C. A. 6th Circuit, 1907. Injunction to restrain defendant from selling an unpatented medicinal preparation, because obtained by underhanded methods from parties who were under contract not to sell the same except under restrictions, discharged. Plaintiffs' system of contracts held in restraint of competition.

Chilley v. U. S. Shoe Mach. Co. 152 U. S., 726 Mass.

1907. Complaint indefinite. Contract as to patented articles not unlawful.

(b) American Banana Co. v. Uuited Fruit Co., 153 F. R,, 943. N. Y. 1907. Discovery of corporation's books compelled in suit under Sec. 7.

(b) Indiana Mfg. Co. v. Case, 154 F. R., 365 C. C. A., 7th Circuit. License contracts restricting sale of patented articles not within the Act.

The following are the cases in the Supreme Court relating to this statute:

(b) United States v. Knight, 156 U. S., 1.

Debs case, 158 U. S. 564.

(a) Trans-Missouri Freight Asso. case, 166 U. S., 290.

(a) Joint Traffic Asso. case, 171 U. S., 505.

(b) Hopkins v. U. S., 171 U. S., 578.

(b) Anderson v. U. S., 171 U. S., 604.

(b) Addystone Pipe & Steel Co. case, 175 U. S., 211.

(b) Montague v. Lowry, 193 U. S., 27.

(a) Northern Securities case, 193 U. S., 197.

Connelly v. Union Sewer Pipe Co., 184 U. S., 540. Holding illegality of combination no defense to a suit on contract for purchase of goods.

See also the lottery cases, 188 U. S., 321, for an exhaustive reëxamination of the scope of the commerce clause. Minn. v. Northern Securities Co., 194 U. S., 48, held that a State may not institute proceedings in equity in the federal courts against the combination of railroads illegal under the Act.

(b) Swift & Co. v. United States 196 U. S., 375 (Beef Trust case), demurrer to bill of complaint overruled, and decree of injunction affirmed.

Harriman v. Northern Securities Co., 197 U. S., 244, applied the doctrine of *in pari delicto* in the parties who deposited their stock under the Northern Securities agreement.

Board of Trade v. Christy, 198 U. S., 236, contract to furnish market quotations to telegraph companies, on the condition that the latter would not furnish them to bucket shops, is not illegal under the Act.

Cincinnati, etc., Packet Co. v. Bay, 200 U. S., 179. One of the head-notes is as follows:

> "Even if there is some interference with interstate commerce, the contract is not necessarily void under the Sherman Act, if such interference is insignificant and merely incidental and not the dominant purpose; the contract will be construed as a domestic contract and its validity determined by the local law."

This head-note, however, goes further than the language of the decision.

In the 201st Volume U. S. Reports, there are several cases concerned only with the inquisitorial powers of the courts and grand juries under the act.

(b) Chattanooga Foundry v. Atlanta, 203 U. S., 391.

The judgment of the Circuit Court should be affirmed.

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